

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Applicant: High Society (WA) Pty Ltd
(represented by Mr Jonathon Crabtree – Liquor Consultant)

First Intervener: Commissioner of Police

Second Intervener: Director of Liquor Licensing
(both represented by Mr David Leigh of State Solicitor's Office)

Commission: Mr Jim Freemantle (Chairperson)
Ms Helen Cogan (Member)
Mr Michael Egan (Member)

Matter: Application for review of the decision of the Delegate of the Director of Liquor Licensing to vary licence conditions pursuant to section 64(1) of the *Liquor Control Act 1988* in respect of premises known as "Lost Society Bar"

Premises: Lost Society Bar
Unit 1, 918 Hay Street, Perth WA 6000

Date of Hearing: 16 February 2015

Date of Determination: 13 March 2015

Determination: The application is refused and the decision of the Delegate Director of Liquor Licensing is varied only to the extent set out in paragraph 19 of this determination.

Background

- 1 This is an application for a review of decision No. A224909 dated 3 October 2014 (“the decision”) of the Delegate of the Director of Liquor Licensing (“the Director”) to impose conditions on the special facility licence number 6370085639 (“the licence”) held by the licensee (High Society (WA) Pty Ltd) (“the applicant”) in respect of the licensed premises known as the *Lost Society Bar* located in Hay Street, Perth.
- 2 On 10 July 2014, as a consequence of a letter dated 22 May 2014 to the Director from Superintendent Migro of the Western Australian Police Force (“the Police”), the Director pursuant to section 64(1) of the *Liquor Control Act 1988* (“the Act”) gave written notice (“the show cause notice”) to the applicant that the Director proposed to impose additional, and vary existing, conditions on the licence held by the applicant and offered the applicant an opportunity to show cause why the conditions proposed should not be imposed or varied as proposed.
- 3 On 22 August 2014, the applicant made submissions to the Director in response to the show cause notice.
- 4 On 3 October 2014, the Director published her decision which imposed additional conditions on the licence regarding the use of an identification system for patrons (“the ID condition”), the maximum number of patrons permitted on the premises, the operation of a CCTV system, and the employment of crowd controllers (“the Security condition”); and varied one of the existing conditions regarding the nature and level of music permitted on the licensed premises (“the entertainment and music condition”).
- 5 On 9 October 2014, the applicant lodged with the Liquor Commission (“the Commission”) applications seeking:
 - (1) a review of the decision; and
 - (2) an interim order staying the variation to the entertainment and music condition, and the imposition of the ID condition and the Security condition.
- 6 At the request of the Commission, the applicant and the Police made submissions in relation to the application for an interim order.
- 7 On 22 October 2014, the Commission refused the application for an interim order in relation to the entertainment and music condition, but, with the consent of the parties, determined that the ID condition and Security condition be stayed until the determination of the review application.
- 8 The applicant and the Police made written submissions in relation to the review application.
- 9 On 16 February 2015, a hearing to determine the application for review was held before the Commission.

- 10 At the hearing before the Commission of the application for review, the applicant and the Police agreed that the only matters in dispute relating to the decision of the Director were the ID condition and the Security condition.

Determination

- 11 For ease of reference the conditions in dispute imposed by the decision are set out in full as follows:

Identification System Condition

- (1) The identification system must be in operation from 8 p.m. until the close of business and must be used by responsible persons to:
- a) check the personal details (including by reference to whether those personal details are recorded on a list of persons subject to barring notices or prohibition orders as defined in the Act); and
 - b) record and retain for a period of not less than 28 days the personal details (by means of them being retained by the identification system in a format that is able to be provided to a member of the police force) of every person (other than an authorised person) entering the premises.

Security Condition

- (1) Crowd controllers, licensed under the *Securities and Related Activities (Control) Act 1996*, are to be employed at a ratio of three (3) crowd controllers for the first 100 patrons and one (1) crowd controller for each additional 100 patrons or part thereof, from 8 p.m. (or the time of opening the premises after 8 p.m.); and
- (2) these crowd controllers (licensed under the *Securities and Related Activities (Control) Act 1996*) are required to be present to monitor the licensed premises and the behaviour of patrons arriving and departing the premises from 8 p.m. (or the time of opening the premises if after 8 p.m.), until 30 minutes after trading ceases.
- 12 The Commission considered the written submissions made by the applicant and the Police prior to the hearing in relation to the relevant matters in dispute and the oral submissions made by the applicant and the Police at the hearing in relation to those matters.
- 13 The applicant's submissions, in summary, were that it was not necessary to have conditions relating to the matters in dispute on the licence as the applicant was voluntarily complying with the intent of the conditions.

14 The applicant also submitted that if the relevant conditions were required to be imposed on the licence then, having regard to the applicant's manner of trade and the nature of the patrons at the premises the conditions should provide:

- (1) in relation to the operation of the ID condition, the identification system should be required to be in operation from 10 p.m. on Friday and Saturday nights only; and
- (2) in relation to the operation of the Security condition, it should be applicable on Friday and Saturday nights only and should require only two (2) crowd controllers for the first 100 patrons and one (1) for each additional 100 patrons or part thereof.

15 The Police submitted that having regard to the history of incidents and behaviour at the premises the conditions should be on the licence rather than be voluntarily undertaken by the applicant, as a preventative measure against unacceptable behaviour.

16 The Police further submitted that the ID condition and the Security condition could be required to be operative on Friday and Saturday nights only, but each condition should operate from 8 p.m. and the number of crowd controllers should remain at three (3) for the first 100 patrons and one (1) for each additional 100 patrons or part thereof.

17 The licensed premises are comprised of a ground and mezzanine floor as well as an alfresco area. Having regard to the relatively small size of the premises, the fact there is only one entrance to the ground and mezzanine floor, the proximate location of the alfresco area to that entrance, and the fact the role of crowd controllers is additional to that of the approved manager(s), the Commission considers that two (2), not three (3), crowd controllers for the first 100 patrons are adequate to control and manage the entrance into, and supervision of patrons on, the premises.

18 However, for the ID condition to be effective and achieve its purpose, the Commission considers the time of commencement of the requirement to check the identification of patrons entering and remaining on the premises should remain at 8 p.m. as determined by the Director.

19 Accordingly, having considered the documentation before the Director when the decision was made and the written and oral submissions made by the applicant and the Police, the Commission is not persuaded that the Director's decision should be varied, save that, the ID condition and the Security condition should be applicable on Friday and Saturday nights only, and that the Security condition in respect of crowd controllers should require two (2), not three (3), crowd controllers for the first 100 patrons.



JIM FREEMANTLE
CHAIRPERSON