

Liquor Commission of Western Australia
(Liquor Control Act 1988)

- Applicant:** Tocoan Pty Ltd
(represented by Mr Ashley Wilson of Frichot and Frichot)
- Objectors:** Richard Sargeant and Margaret Sargeant
Jennifer Waddell
Gavin Youngman
Ross Castledine and Wendy Castledine
- Interveners:** Commissioner of Police
(represented by Mr Peter Slater)
- Executive Director Public Health
(represented by Mr Eric Heenan of the State Solicitor's Office)
- Director of Liquor Licensing
(represented by Mr Eric Heenan of the State Solicitor's Office)
- Commission:** Mr Jim Freemantle (Chairperson)
Mr Eddie Watling
Mr Greg Joyce
- Date of Hearing:** 21 May 2010
- Date of Determination:** 11 June 2010
- Matter:** Application for review of a decision of the Delegate of the Director of Liquor Licensing
- Determination:** The decision of the Delegate of the Director of Liquor Licensing is quashed and the application for an extended trading permit pursuant to section 60(4)(g) of the *Liquor Control Act 1988* is granted, in part, and subject to conditions

Authorities cited in determination:

Hancock -v- Executive Director of Public Health [2008] WASC 224

Palace Securities Pty Ltd v Director of Liquor Licensing [1992] 7WAR 241

Hermal Pty Ltd v Director of Liquor Licensing [2001] WASCA 356

Re Gull Liquor (1999) 20 SR (WA) 321

Executive Director of Health –v- Lily Creek International Pty Ltd & Ors [2000] WASCA 258

Introduction

- 1 On 4 May 2009 Tocoan Pty Ltd lodged an application for the grant of an extended trading permit, for a period in excess of three weeks, pursuant to section 60(4)(g) of the *Liquor Control Act 1988* ("the Act") in respect of premises known as the Reef Hotel and located at 12 Victoria Street, Bunbury.
- 2 In decision A199531 dated 31 December 2009 the Delegate of the Director of Liquor Licensing refused the application.
- 3 On 25 January 2010 Tocoan Pty Ltd lodged an application for a review of the Delegate's decision pursuant to section 25 of the Act.
- 4 In respect of the application for an extended trading permit, four residents in the vicinity of the licensed premises lodged objections; the Executive Director Public Health lodged a Notice of Intervention pursuant to section 69(8a)(b) of the Act; and the Commissioner of Police lodged a Notice of Intervention pursuant to section 69(6)(c). On 2 February 2010 the Director of Liquor Licensing lodged a Notice of Intervention in respect of the review application, pursuant to section 69(11) of the Act.
- 5 In conducting a review under section 25, the Commission is not constrained by the finding of error on the part of the Director of Liquor Licensing, but is to undertake a full review of the materials before the Director (or his Delegate) and make its own determination on the basis of those materials (refer *Hancock -v- Executive Director of Public Health [2008] WASC 224*).
- 6 A hearing was conducted on 21 May 2010.

Preliminary matter

- 7 Prior to the commencement of the hearing of the review application, Mr Peter Slater, on behalf of the Commissioner of Police, advised the Commission that the police intervention in respect of the original application for the extended trading permit before the Director of Liquor Licensing may be flawed because the police officer who lodged the Notice of Intervention may not have been authorised in writing, to act on behalf of the Commissioner of Police, as required under section 3(6) of the Act. Consequently, it is likely that the intervention by the police was a nullity.
- 8 After discussion between the parties, and to overcome any procedural technicalities and allow the review application to proceed, Mr Wilson, on behalf of the applicant, consented to the Commissioner of Police intervening in the review proceedings with the Commission taking into consideration the material relied upon by the Commissioner of Police in the proceedings before the Director of Liquor Licensing. The Commission accepted this proposition and the hearing of the review application proceeded.

Submissions on behalf of Tocoan Pty Ltd in support of its application for an extended trading permit

- 9 The applicant seeks the grant of an extended trading permit to authorise trading on:
- Thursday evenings from 12 midnight to 1.am;
 - Friday evenings from 12 midnight to 2.00am; and
 - Saturday evenings from 12 midnight to 2.00am.
- 10 The applicant, Tocoan Pty Ltd, took over the premises on 12 February 2005 and has had a number of applications for on-going extended trading permits approved since that time. The last permit approved for the premises expired on 14 June 2009 and authorised trading on Thursdays until 1.00am, Fridays until 1.30am and Saturdays until 2.00am.
- 11 The premises has had an on-going extended trading permit (in one form or another) for the last thirteen years and therefore the late-night trading operations of the Reef Hotel are well established in the locality.
- 12 According to the applicant in its Public Interest Assessment (PIA), the enduring popularity and existing non-problematic trading history of the premises clearly establishes that the grant of a new permit will have a positive impact and benefit the local community. It was submitted that there will be no negative health or social effects resulting from the grant of the application or any negative impact upon the quality of life of any person or groups within the locality because:
- there is no indication from the locality population statistics that there are any vulnerable persons or groups within the locality who would be negatively impacted by the grant of the application;
 - there is no issue of noise, increased traffic congestion, parking or other amenity disturbance being caused to residents of the locality;
 - there is no significant likelihood that the grant of the application will result in or contribute to increased safety or anti-social issues (vandalism, public disorder, public drunkenness etc) within the locality;
 - the adoption by the applicant of responsible server practices will minimize any potential for negative impact on the amenity of the locality and any potential harm or ill-health to any person or group of persons within the locality;
 - Bunbury is not a "remote" community and has access to full policing and health care services and facilities. The persons residing in or resorting to the locality therefore do not experience any prejudice or disadvantage as a result of the nature and location of the locality;

- there is no indication that the grant of the application will likely result in any increase in the incidence of drink-driving offences or road traffic deaths within the locality;
- the grant of the application will not result in any additional community support services being required, and will not result in any additional burden on police, community support services or hospital services; and
- there is no likelihood that the grant of the application will lead to greater consumption of liquor, increased harm or ill-health for residents or visitors to the locality, or any measurably greater cost to the community as a result of the use of liquor.

13 The Reef Hotel is located in the Bunbury CBD in Victoria Street, the main street of Bunbury and the focus of commercial, entertainment and retail services and facilities in the town. Therefore, for the purposes of this application, and in accordance with the Policy Guidelines issued by the Director of Liquor Licensing, the relevant locality is a 3 kilometre radius of the site of the premises and an area within a 200 meter radius of the premises being the area most likely to be impacted by the grant of the application. The applicant subsequently provided information on:

- the local characteristics of the area;
- population demographics including population forecasts;
- "at risk" groups;
- tourism in the area; and
- existing premises in the locality.

14 In its PIA, the applicant also addressed the matters set out in section 38(4) of the Act and the primary objects of the Act in section 5(1). A petition containing in excess of 900 signatures from persons who utilised the existing extended trading permit at the venue together with 18 letters of support were also submitted with the application.

Submissions on behalf of the objectors

15 Richard and Margaret Sargeant are residents who live in close proximity to the Reef Hotel. The primary concern of these objectors is excessive noise that emanates from the hotel. Whilst acknowledging that late night noise can reasonably be expected in inner city and residential areas during a weekend, high noise levels during the working week is unacceptable. Mr and Mrs Sargeant are also concerned about the significant amount of anti-social behaviour from patrons which increases during the night and manifests itself in the form of violence, vandalism and littering. A vehicle parked outside their residence was damaged recently by a patron who jumped up and down on the roof of the vehicle.

16 Ms Jennifer Waddell believes that the grant of the application will cause undue offence, annoyance, disturbance and inconvenience to her. According to Ms Waddell she already

experiences problems on Wednesday, Thursday, Friday and Saturday nights with refuse, yelling, swearing and screaming occurring in the immediate vicinity of her house. The refuse consists of cans and broken glass on her street corner and the sounds of police sirens and ambulances throughout the night is annoying. The noise starts around midnight and carries on for several hours. Ms Waddell claims that she cannot open her windows due to the excessive noise and the late night trading at the hotel spoils the ambience of the area due to the excessive noise and anti-social behaviour.

- 17 Mr Gavin Youngman believes that the grant of the application will cause undue disturbance and lessen the quiet and good order of the locality. Mr Youngman states that he lives within direct line-of-sight of the Reef Hotel and while he does not object to an extension of trading hours on Friday and Saturday nights, he does object to any extension of hours on Thursday nights due to it being a week night and excessive noise on this night is a problem.
- 18 Ross and Wendy Castledine live in a strata complex with five other residential properties. Mr and Mrs Castledine are concerned about the noise and rubbish generated by patrons of the Reef Hotel who make their way home up Victoria Street late at night. Mr Castledine claims that rubbish is left lying around for days before it is picked up, and often it is the local residents who attend to this task and he has hosed vomit off the footpath in front of his units three times in recent months. According to Mr Castledine the Reef Hotel is in the CBD but is also close to many residential apartments and homes and the area is also a great gathering place for the hoons in the area to tear up and down the street. Mr and Mrs Castledine have a licence for a Bed and Breakfast but are concerned that the noise and behaviour associated with patrons of the Reef Hotel will deter their guests.

Submissions on behalf of the Executive Director public Health (EDPH)

- 19 The purpose of the intervention from the EDPH was to present information for consideration by the licensing authority on the extent of alcohol-related harm in the locality and recommend that the application be refused. According to the EDPH there are a number of high risk aspects associated with the application including:
- an existing level of alcohol-related harm and problems occurring in the locality of the premises;
 - existing levels of drink-driving in Bunbury; and
 - research which shows late night trading is associated with increased rates of alcohol-related harm.
- 20 It was submitted by the EDPH that there are currently 67 active liquor licences in Bunbury and there is a high density of premises within the immediate vicinity of the Reef Hotel. Research shows that high outlet density of licensed premises and late night trading are positively linked to increased levels of alcohol-related harm. Bunbury is

currently experiencing concerning levels of alcohol-related harm, indicated by high rates of Emergency Department presentations and crime and assaults occurring in the area. Emergency Department data for Bunbury shows that the alcohol-related presentations to the Bunbury Hospital Accident and Emergency Department (A&E) increases on Saturdays and Sundays, when compared to other days of the week and coincides with the operation of late night extended trading permits on Friday and Saturday nights in Bunbury.

- 21 Alcohol consumption in the Statistical Local Area of Bunbury is higher than the state average. Adult Per Capita Alcohol Consumption (APCC) at the State level was calculated at 11.22 litres for 2004/2005, however for the Statistical Local Area of Bunbury the APCC was calculated at 16.88 litres for 2004/2005, up from 16.51 litres in 2003/2004. According to the EDPH levels of alcohol consumption are an indicator of the type of drinking culture and levels of harm experienced within a community and there is compelling research that as alcohol consumption increases, so do a range of negative social, health and legal consequences. Increasing access and convenience of obtaining alcohol through extended trading hours in a community already experiencing consumption rates higher than the State average is a concern.
- 22 The EDPH also asserts that Bunbury experiences a high level of crimes and assaults. Using the 2006-07 Community Safety and Crime Prevention Profile for the City of Bunbury, it is shown that, when comparing all assault rates per 1000 persons, Bunbury has larger rates than the regional and State level. For aggravated assault alone, there was a 16.8% increase in offence rates from 2005/06 to 2006/07 in Bunbury whereas in the same period, WA experienced only a 7.4% increase and the South West had a 2.4% decrease.
- 23 It was also submitted that because the Reef Hotel is one of the few licensed premises in Bunbury trading after 1.00am and their application is for an extended trading permit, harm occurring during the proposed permit hours is a relevant public interest consideration. Assault presentation numbers to Bunbury Hospital Emergency Department (ED) during extended trading permit hours have been increasing from 2004/05. These increases coincide with increases in trading hours granted to the Reef Hotel. In 2004/05, the Reef Hotel traded under a permit from 12 midnight to 1.30am on Saturdays. In 2005/06 the extended trading permit for the Reef Hotel was further extended to allow additional trading on Friday nights from 12 midnight to 1.00am. During the same period assault presentations to the Bunbury Hospital ED rose significantly on Saturday and Sunday morning (coincides with the extended hours). From 2006 to 2009, the Reef Hotel has been permitted to trade on Thursday from 12 midnight to 1.00am, Fridays from 12 midnight to 1.30am and Saturdays from 12 midnight to 2.00am and again assault presentations during this period have risen on Saturdays and Sundays.

- 24 Further data presented by the EDPH in his submission indicates that:
- there was a 42.4% increase in alcohol-related disorderly conduct offences in Bunbury from 2007 (33 offences) to 2008 (61 offences);
 - during the period 2002-2006 there were a total of 876 alcohol-related hospitalisations in Bunbury at a cost of \$3,929,939; and
 - between June 2007 and March 2008 there were 169 drink-driving charges where Bunbury was recorded as the drinking suburb. Licensed premises were recorded as the drinking location in 55 of the 169 charges (32.5%) and the Reef Hotel had the highest number of drink-driving charges (8), when compared to other licensed premises (next highest was six).
- 25 It was therefore submitted by the EDPH that in view of the data indicating high levels of existing alcohol-related harm in the locality of the Reef Hotel, the application should be refused.

Submissions on behalf of the Commissioner of Police

- 26 It was submitted on behalf of the Commissioner of Police that the only reason that the applicant is seeking to extend its permitted trading hours is for financial gain, and this is not a proper reason for granting the application. It was also submitted that section 60 of the Act was enacted to provide a mechanism whereby a licensee could obtain approval to sell or supply liquor for some substantial occasion or reason that is not catered for under the authority of their existing licence and not as a reward for good conduct or as an incentive for financial outlay or responsible management practices.
- 27 The Commissioner of Police is of the view that in balancing the objects of the Act in section 5, the overall detrimental effects that the grant of the application may have on the interests of the community in maintaining peace and amenity of the precinct, far outweigh the commercial interests of the applicant.
- 28 Data was submitted showing calls to police relating to assaults and disorderly offences for the period 1 January 2007 until 11 June 2009 and a breakdown of drink-driving offences during the same period where the Reef Hotel is indicated as the last place of drinking. Callouts recorded on the police data base to the Reef Hotel indicate that in 2008 there were 11 for the full year and from 1 January 2009 until 12 June 2009 there were 16.
- 29 It was further submitted by the police that on 19 June 2009 they attended the Reef Hotel regarding an incident of a patron being glassed and did an inspection of the licensee's incident register. In examining the register, no incidents had been recorded on several occasions when police had attended the premises and the licensee was subsequently issued with a \$1000 infringement. Enquiries by the police also revealed that on the same night the premises were operating in breach of condition 15 of their permit and on

Monday 22 June 2009, police investigating a fight at the premise in the early hours of Sunday 21 June 2009 discovered that the premises had been trading under their permit although the permit had expired.

- 30 An examination of the licensee's incident register indicate that many incidents related to intoxication, aggression and patrons fighting. It was submitted that the overall rate of anti-social behaviour in Bunbury is on the increase, with figures for the year to date showing a projected increase of approximately 25% for alcohol-related assaults for 2009.
- 31 The police also assert that anti-social behaviour and violent crime in the area demonstrates that there has been no real reduction in anti-social offences and in fact an increase has been noted. A shift in closing times for the licensed premises will correspondingly shift the peak times of such unlawful conduct requiring allocation of valuable emergency service resources to respond.
- 32 Finally, it was submitted that since the Reef Hotel had reverted to closing at 12 midnight because their current extended trading permit expired:
- the licensee had ceased operating their CCTV system;
 - there has been a drastic drop in police call outs for assaults and anti-social behaviour at the venue in the six weeks following the expiry of the extended trading permit;
 - the two nearby nightclubs were closing early at 4.00am and 4.30am and both clubs were catering adequately for the hours between midnight and 2.00am; and
 - the two nightclubs had experienced longer queues but they are now dealing with patrons who are far less intoxicated.

The applicant's responsive submissions

- 33 Since Tocoan Pty Ltd took over the operation of the Reef Hotel in February 2005 there have been no infringement notices given nor any charges or convictions made against the licensee or management of the premises under the Liquor Act or any other legislation until the last permit expired on 14 June 2009. In respect of the infringement notice issued by the police on 19 June 2009, the applicant disputes the circumstances of this infringement notice and has elected to defend the matter in court and therefore the licensee should be afforded the presumption of innocence, not guilt.
- 34 There is a significant demand for the grant of a new extended trading permit as demonstrated by the history of trading at the premises under previous permits, the 900 signature petition and various letters of support. Many people from Bunbury and elsewhere, including many tourists visiting the area, attend the venue and it is not uncommon for the hotel to attract 2000 people on a Saturday night.

- 35 Other late night venues in Bunbury do not have the capacity to handle the patrons forced to leave the Reef Hotel at 12 midnight with patrons now having to wait in long lines or having to accept poor standard premises or entertainment.
- 36 The applicant disputes the accuracy of some of the police data relating to incidents at the venue and police callouts. Some callouts relate to incidents that occurred out front of the venue in Victoria Street by persons who had not been at the Reef Hotel and some callouts are duplicated or occurred when the premises was in fact not trading. According to the applicant, when the police data is scrutinised, the figures equate to a police attendance of 1.3 times per month or four times every three months, which is an extremely low rate. Even accepting the disputed police data, there are only 13 callouts in an 18 month period during the operation of the previous permit, which equates to approximately four times every six months or one callout for every 19,500 (approximate) visits by the public or 0.0051%. The applicant also questions the value of the drink-driving data provided by the police.
- 37 The applicant asserts that the EDPH intervention is not a predictor of potential harm or ill-health, or a competent analysis of actual harm or ill-health which may be occurring in the locality as a result of the existing extended trading permit hours which have been in place for many years. At its strongest, the EDPH intervention merely identifies that there is a potential for harm to occur during late night trading hours, based on research and the select statistical information which the Health intervention has identified. The narrow scope of the intervention does not of itself establish that the grant of the application would not be in the public interest and the concerns raised in the intervention are merely one factor to be assessed by the licensing authority in exercising its discretion under section 33 of the Act. The applicant believes that the trouble free history of the operation of extended trading permits over many years at the Reef Hotel, as supported by the police data (ie 1.3 callouts every month) is a preferable indicator of whether or not the grant of the application would, on the balance of probabilities, result in harm or ill-health.
- 38 In response to the resident objectors, the applicant opined that:
- Mr Youngman makes it clear that his objection is only to Thursday nights and not Friday or Saturday. The Reef Hotel has been operating at the current site since at least 1932 and has had successive extended trading permits since 1997 which pre-dates Mr Youngman moving into the area. Mr Youngman has never lodged a complaint about excessive noise or of his concerns with the hotel management, local government authority, the police or the licensing authority. Friday and Saturday nights are the busiest nights at the hotel with highest patron numbers on these nights, yet Mr Youngman does not experience any problems on these nights, therefore it is unlikely that he could be unduly disturbed or inconvenienced on a Thursday night.
 - Ms Waddell complains that she has found refuse (cans and broken glass etc) on her street corner however the Reef Hotel does not stock or sell for consumption on the

premises any product in cans, and does not sell packaged liquor for removal from the premises and security does not permit any patron to remove any liquor container from the premises. In respect of Ms Waddell's claims of yelling, swearing and other disturbances she does not indicate with what frequency she has been disturbed by such behaviour or whether or not that behaviour is caused by patrons of the Reef Hotel or some other establishment. There are two night clubs and another hotel (the Burlington) with an extended trading permit within 100 metres of the Reef Hotel and a further 100 metres down Victoria Street are two more hotels (one with an extended trading permit) and a special facility licence (the Lord Forrest). Ms Waddell does not appear to have ever lodged any complaint with the hotel management or any other authority.

- The primary concern of Richard and Margaret Sargeant is noise coming from the venue, however there are no speakers in the beer garden, which is shrouded by the two storey tavern building and any noise from inside the venue is contained in the building. The extended trading hours at the hotel pre-date the Sargeants moving into the area and if they were actually experiencing undue disturbance or noise from the premises they would have lodged a complaint with the hotel management or a relevant authority, however it appears that they have never lodged any complaints in the past.
- The tone of the objection and accompanying letter from Mr and Mrs Castledine reflect an attitude that they don't want a late-night trading venue in their area no matter what. A critical fact is that the Castledines don't indicate that they have any problem with amplified noise generated from the Reef Hotel, and make no mention of the noise complained of by Mr and Mrs Sargeant. In respect of the rubbish issue, the Reef Hotel doesn't sell cans and the hotel employs cleaners to clean up around the venue and the car park opposite the tavern. There is nothing to suggest that any disturbance or annoyance which the Castledines may experience is in fact caused by patrons of the Reef Hotel and not by patrons of the other premises or venues along Victoria Street. The Castledines have chosen to live in the CBD in close proximity to the entertainment precinct on Victoria Street.

Determination

39 This is an application for an extended trading permit under section 60(4)(g) of the Act to authorise trading for a period exceeding three weeks. Consequently, pursuant to Regulation 9F(b) of the *Liquor Control Regulations 1989* and sections 38(1)(b) and 38(2) of the Act, the applicant must satisfy the licensing authority that granting the application is in the public interest.

40 Section 38(4) of the Act provides:

- (4) Without limiting subsection (2), the matters the licensing authority may have regard to in determining whether granting an application is in the public interest include –

- a) The harm or ill-health that might be caused to people, or any group of people, due to the use of liquor; and
- b) The impact on the amenity of the locality in which the licensed premises, or proposed licensed premises are, or are to be situated; and
- c) Whether offence, annoyance, disturbance or inconvenience might be caused to people who reside, or work in the vicinity of the licensed premises or proposed licensed premises; and
- d) Any other prescribed matter.

- 41 Pursuant to section 33(1), the licensing authority has an absolute discretion to grant or refuse an application on any ground or for any reason that it considers in the public interest; the discretion being confined only by the scope and purpose of the Act (refer *Palace Securities Pty Ltd v Director of Liquor Licensing [1992] 7WAR 241*).
- 42 Advancing the objects of the Act, as set out in section 5, is also relevant to the public interest considerations (refer *Palace Securities supra*). In respect of this application, the objects set out in sections 5(1)(b) and (c) are particularly relevant.
- 43 The Commission is also mindful of the observations of Templeman J in *Hermal Pty Ltd v Director of Liquor Licensing [2001] WASCA 356*. When determining an application of this nature, the only question is whether, having regard to all the circumstances and the legislative intention, the grant of an extended trading permit is justified. In answering that question, the Commission has a wide discretion. It is a matter for the Commission to decide what weight to give to the competing interests and other relevant considerations.
- 44 The evidence from the applicant is that the Reef Hotel is a popular venue, particularly on the nights to which the permit would apply, and has operated with an extended trading permit in one form or another since 1996. Since this applicant took over the premises in 2005, it has been granted two permits, with the last expiring on 14 June 2009. The last permit authorised trading on Thursday nights to 1.00am, Friday nights to 1.30am and Saturday nights until 2.00am.
- 45 On a Saturday night the hotel can attract up to 2000 patrons (both locals and tourists) and other late night trading venues in Bunbury do not appear to have the capacity to adequately handle the patrons forced to leave the hotel at 12 midnight with patrons now having to wait in queues or lines to gain access to other venues after midnight. The applicant submitted a petition with over 900 signatures and various letters of support to demonstrate the strong demand for the hotel to extend its permitted trading hours.
- 46 The Commission is satisfied, based on the evidence submitted by the applicant that the grant of an extended trading permit would be consistent with object 5(1)(c) of the Act. However, this must be balanced against the matters raised by the resident objectors, the EDPH and the police.

- 47 Section 37(3) of the Act provides that an application shall not be granted where the licensing authority is satisfied that an undue degree of offence, annoyance, disturbance or inconvenience to persons who reside in the vicinity of the licensed premises would be likely to occur. This is also the basis for an objection under section 74 together with the possible disturbance to the amenity, quiet or good order of the locality (refer section 74(g)(i) and (ii)). This is essentially the ground of objection relied upon by the resident objectors.
- 48 Having considered the evidence of the resident objectors, the Commission is of the view that there are inconsistencies in the quality of the evidence and the various issues raised in the objections. Mr and Mrs Sargeant complain of noise emanating from the premises, but this is not an issue for other residents. Mr Youngman only objects to any extension of hours on a Thursday night but does not seem concerned or disturbed by the operation of the hotel on Friday or Saturday nights, which are the busiest nights for the hotel. Ms Waddell and Mr Castledine complain of problems with refuse, including cans, however according to the unrefuted claims of the applicant, it does not sell products in cans for consumption on the premises. Other complaints relate to noise and disturbance in the streets late at night, however there is a lack of evidence that it is the patrons of the Reef Hotel causing these problems. The Reef Hotel is in an entertainment precinct with other premises which trade late at night. Also, there is no evidence to indicate that any of the objectors have been sufficiently concerned over the past four or five years to lodge a complaint with the hotel management, the local government authority, police or with the Director of Liquor Licensing. It was also asserted by Mr Castledine that the Reef Hotel is in close proximity to many residential apartments and homes, yet the vast majority of those persons have not objected to the application. In addition, the Commission notes that none of the resident objectors who lodged an objection to either the 2005 or 2007 application for an extended trading permit at this premises objected to this application.
- 49 In view of the above, the Commission finds that the resident objectors have not established the validity of their objection as required under section 73(10) of the Act.
- 50 Unlike an objector, there is no onus on interveners to establish their assertions of fact or opinion (refer *Re Gull Liquor (1999) 20 SR (WA) 321*).
- 51 In respect of the intervention on behalf of the Commissioner of Police, the applicant disputes the veracity of some of the data presented and notwithstanding, contends that police attendance rates at the premises are very low particularly in view of the number of patrons that attend the venue. Also, in respect of the evidence presented in this case, there is little to suggest that the premises are not reasonably well managed. Since the applicant commenced trading at the hotel in February 2005 until the last extended trading permit expired on 14 June 2009, the applicant has not been issued with any infringement notices or prosecuted for any breaches of the Act. An infringement notice issued to the applicant on 19 June 2009 has been disputed by the licensee and it has elected to defend the matter in court.

- 52 The intervention from the EDPH provided relevant data on existing levels of alcohol-related harm in the locality and research linking late night trading with increased rates of harm. One of the primary objects of the Act is to minimize harm or ill-health caused to people, or any group of people, due to the use of liquor (refer section 5(1)(b)).
- 53 Where there is conflict between the various objects of the Act, the licensing authority needs to weigh and balance those competing interests (refer *Executive Director of Health –v- Lily Creek International Pty Ltd & Ors [2000] WASCA 258*).
- 54 The Commission therefore needs to consider the level of alcohol-related harm, due to the use of liquor, which is likely to result from the grant of the application and whether the possibility of harm or ill-health is of a such a serious nature to be sufficient for the licensing authority to impose stringent conditions on a permit or refuse the grant absolutely. As observed by Ipp J (in *Lily Creek supra*), it is significant that the primary object in section 5(1)(b) is to “minimize” harm or ill-health, not to prevent harm or ill-health absolutely. The word “minimize” is consistent with the need to weigh and balance all relevant considerations.
- 55 In the context of this application the Commission acknowledges that there is some tension between promoting objects 5(1)(b) and (c). It is therefore necessary for the Commission to balance these competing interests.
- 56 The Commission accepts that there is a strong demand for liquor and related services by the public, including tourists, post midnight at this venue. The premises have operated with an extended trading permit in one form or another since 1995 and the venue appears to be reasonably well managed. Since post midnight trading at the venue ceased existing late night trading venues in the area cannot adequately cater for patrons of the Reef Hotel. The Commission is of the view that the existing management strategies implemented by the licensee together with appropriate conditions on the permit will help mitigate against the potential impact that the grant of the application may have on existing levels of alcohol-related harm. For this reason, the Commission is not prepared to accede to the applicants to request expand trading on Friday nights to 2.00am, rather than 1.30am which was previously approved.
- 56 Accordingly, an extended trading permit is granted to the Reef Hotel to trade:
- 12 midnight to 1.00am the following morning on Thursday nights;
 - 12 midnight to 1.30am the following morning on Friday nights; and
 - 12 midnight to 2.00am the following morning on Saturday nights.
- 57 The permit will be subject to the following conditions:
- i. Patrons are prohibited from entering or re-entering the premises after 12 midnight.

- ii. No trading is permitted on Christmas Day, Good Friday or before noon on Anzac Day.
- iii. The areas to which the permit relates are the Three Monkeys Bar and the Beer Garden, known as the Back Bar, outlined in yellow on the plans dated 7 October 2005.
- iv. There is to be no liquor discounting or advertising of cheap liquor during the operation of the permit.
- v. Advertising in relation to the permit times is restricted to advertising on the premises only.
- vi. The sale of packaged liquor for consumption off the licensed premises during the hours covered by this permit is prohibited.
- vii. The licensee is to engage a person to collect litter around the vicinity of the premises on Saturday and Sunday mornings.
- viii. No live or pre-recorded music, or speakers, are to be in that area of the tavern known as the Back Reef.
- ix. During the nights the permit is operating:
 - The alfresco area is not to be used from 10.00pm;
 - The external doors to the area known as the Blue Arrow Bar are to remain closed from 10.00pm onwards; and
 - All windows located on the west side of the tavern, that is, those facing Victoria Street are to remain closed.
- x. It is a condition of this permit that the permit is effective from 17 June 2010 until 17 June 2015.
- xi. Liquor sold and supplied is restricted to one (1) bottle of wine not exceeding 750mls or a maximum of four (4) alcoholic drinks per person at any one time.
- xii. No liquor is to be sold or supplied in non-standard measures, including:
 - a. jugs or pints of spirits; or
 - b. shooters (including liqueurs and/or spirits served in a 30ml receptacle) or shooter style drinks (e.g. 'shots', 'jelly shots' or 'test tubes').
- xiii. No liquor is to be supplied for consumption with energy drinks.

(for the purposes of this condition “energy drinks” has the same meaning as “formulated caffeinated beverage” within the *Australian New Zealand Food Standards Code* with a composition of 145mg/l of caffeine or greater).

SECURITY REQUIREMENTS

- xiv 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.
- xv Security personnel and crowd controllers (licensed under the *Securities and Related Activities (Control) Act 1996*), are to be present to monitor the licensed premises and the behaviour of patrons arriving and departing the premises from 8 pm (or the time of opening of the premises if after 8 pm), until one (1) hour after trading ceases. While these personnel have no authority over the patrons when they are away from the licensed premises, their presence may assist in the orderly dissipation of patrons once they leave the premises.
- xvi A video surveillance system, able to identify individuals and showing times and dates, must be in place. It is expected that this system should provide and record continuous images of the entrances to the premises, bars and entertainment/dance areas, from 8 pm (or the time of opening of the premises if after 8 pm), until one (1) hour after trading ceases.
- xvii Images recorded via the video surveillance system must be retained for fourteen (14) days (or such 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.
- xviii A minimum of two uniformed security guards are to patrol the outside street areas comprising a 200 metre radius of the tavern, including the car park at the rear of the residential units in Victoria Street, from at least 10.00pm until 30 minutes after closing time.
- xix A “hotline” complaint service is to be provided for residents. Within 21 days of the date of this decision, the licensee is to undertake a letter drop to residents within a 200 meter radius of the premises advising them of the “hotline” number. The licensee is to maintain a register of complaints from residents, including details of the outcome of the complaint. A letter drop to residents in compliance with this condition is to be undertaken by the licensee every 12 months. The licensee is to confirm in writing, with the Director of Liquor Licensing, his compliance with this condition.

- xx Neat and tidy dress standards are to be required by the licensee for all patrons and without limiting the generality of the foregoing, no person in bare feet, thongs or singlet is to be permitted to enter the tavern during the nights the permit is in operation.
- xxi Heated snack food is to be available during the hours of operation of the permit.

A handwritten signature in black ink, appearing to read 'Jim Freemantle', with a horizontal line underneath it.

JIM FREEMANTLE
CHAIRPERSON