

Liquor Commission of Western Australia***(Liquor Control Act 1988)***

- Applicant:** The Waterfront Cafe and Restaurant Pty Ltd
(represented by Mr Darren Reeve, director and company secretary of the Applicant; Mr Barry Jones, director of Captam Pty Ltd, the registered proprietor and lessor of the subject premises)
- Intervener:** Director of Liquor Licensing
(represented by Mr David Anderson and Ms Hannah Stapp of the State Solicitor's Office and Mr Daryl McLauchlan of Department of Racing, Gaming and Liquor)
- Commission:** Mr Jim Freemantle (Chairman)
Ms Helen Cogan
Mr Greg Joyce
- Matter:** Application for review of a decision of the delegate of the Director of Liquor Licensing pursuant to section 25 of the *Liquor Control Act 1988*
- Premises:** Waterfront Cafe and Restaurant
- Date of Hearing:** 25 July 2011
- Date of Determination:** 9 August 2011

Determination:

Decision A 217694 of the delegate of the Director of Liquor Licensing is quashed and the matter is remitted to the Director for reconsideration having regard to the common ground reached by the parties during the Hearing.

Introduction

- 1 The Applicant applied for a conditional grant of a restaurant licence on 8 October, 2010 for the premises situated at Tenancy 1, 33 Ocean Falls Boulevard, Mindarie. The Application was made pursuant to sections 50 and 62 of the *Liquor Control Act 1988* ('the Act').

- 2 On 21 March 2011 by decision A 217694, the delegate of the Director Liquor Licensing (“the delegate”) refused the Application.
- 3 The Application was refused because the Applicant had not satisfied the delegate that he had made adequate provision for toilets. This decision was based on the application of existing policy of the Department of Racing, Gaming and Liquor (“the Department”), a physical inspection of the proposed premises which demonstrated a distance of approximately 90 metres to the offsite toilets (“the Breezeway toilets”), the route to which was exposed to the elements and the existing capacity of the toilets.
- 4 The Applicant applied to the Commission for a review of this decision on 18 April 2011 pursuant to section 25 of the Act.
- 5 By notice dated 20 April 2011 the Director of Liquor Licensing (“the Director”) advised the Commission of his intervention in the subject proceedings pursuant to section 69(11) of the Act.
- 6 A hearing of the Commission was conducted on 25 July 2011.

Submissions of the Applicant

- 7 The Applicant stated that the existing tenancy infrastructure has operated in various configurations since 1988 and the existing toilet facilities have always been adequate. The subject proposal will not increase toilet traffic. The existing Breezeway toilets consist of 4 female water closets, one male water closet, one unisex disabled water closet and a 2.5 metre urinal.
- 8 The Director has published a policy on “Standards of Licensed Premises”. In relation to toilet facilities that policy states: “... toilets in respect of all licences (other than club restricted licences and special facility licences), shall be located on the licensed premises and entered from within, or in the case of existing premises, immediately adjacent to the licensed premises and protected from the elements. This requirement may be varied in respect of restaurants that are part of a shopping complex and toilets are provided in the centre or complex for the use of the tenant’s patrons. Nevertheless, toilets must be in close proximity of the premises and the operator (applicant/licensee) must ensure that patrons must have access to toilets at all times during which the restaurant operates.” The subject complex includes 7 tenancies together with the Boat Alehouse and the Indian Ocean Brewing Company and these constitute a “shopping Centre” in the context of the Director’s policy statement on “Standards of Licensed Premises” and allow the policy to be varied.
- 9 Mindarie is a designated tourist area and the Commission in carrying out its functions under the Act is obliged to consider the object of the Act which includes the promotion of tourism.

- 10 The Applicant stated that the 90 metres route to the toilets could be reduced to 50 metres using an alternate route which cuts through an existing licensed area. Whilst this route is not covered it does provide a degree of protection from the elements.
- 11 Two alternative toilets are available for the use of the proposed premises and are approximately 20 metres from the premises.
- 12 The Applicant refuted the claim of the Intervener that the Breezeway toilets were designated for the exclusive use of the Dome and the Maya Masala Indian Restaurant when the latter licence was approved.
- 13 There are 45 water closets (29 female, 13 male and 3 unisex disabled) together with 10.2 metres of urinal trough designated for the use of patrons of the Mindarie Marina Hotel complex which includes the Boat Alehouse, the Indian Ocean Brewing Company and the Dome.
- 14 The City of Wanneroo in its correspondence dated 20 December 2011 has advised that it assesses toilet requirements in accordance with the Building Code of Australia and the Health Act 1911 and the subject proposal satisfies these legislative requirements.

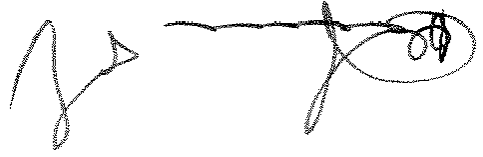
Submissions of the Intervener

- 15 The Intervener stated that when the licence was approved for the Maya Masala Indian Restaurant the Breezeway toilets were identified in green on the plan as the designated toilets but they were not for the exclusive use of that restaurant.
- 16 The route to the Breezeway toilets is approximately 90 metres. Whilst it was conceded there is a shorter route this was not covered and moreover the route traversed an existing licence area which is not acceptable to the Director.
- 17 The Breezeway toilets are currently well patronised including by patrons of the Ocean Brewing Company and are operating at near capacity.
- 18 The separate two toilets identified by the Applicant as being available for the subject licence are security coded and would need to be converted for public access.
- 19 The use of the Breezeway toilets is further compounded by the signage within the Ocean Brewing Company beer garden directing patrons to use the Breezeway toilets rather than being directed to the internal toilets.

Common ground between the Parties

- 20 Following a short adjournment the Applicant gave the following undertakings:
 - The two toilets referred to in paragraph 11 above will be made available to the patrons of the subject application and the security coding will be removed.

JIM FREEMANTLE
CHAIRPERSON



Determination of the Commission

22 Given the conciliatory approach by both parties, the Commission determines that Decision A 217694 of the delegate of the Director of Liquor Licensing is quashed and the matter is remitted to the Director for reconsideration having regard to the common ground reached by the parties during the Hearing. The common ground being matters contained in material before the delegate of the Director when the relevant decision was made albeit perhaps not set out with sufficient clarity to allow the Licensing Authority (the Delegate of the Director) properly to understand how the issue of sufficiency of toilet facilities could be addressed.

21 The intervenor acknowledged these undertakings and indicated he would be prepared to re-examine the Application.

- The Brezeway toilets will be available for the use of patrons of the current application.
- The lessor will apply to the Director to have an area of an existing licence delicensed to allow patrons of the proposed licence access to the Brezeway toilets without having to traverse an existing licence.
- The signage directing patrons to the Brezeway toilets in the Mindarie Marina hotel complex including the Boat Alehouse, the Indian Ocean Brewing Company (including the beer garden) and the Dome will be removed so that patrons will be directed to the internal toilets referred to in paragraph 13 above.