

Liquor Commission of Western Australia
(Liquor Control Act 1988)

- Complainant:** Commissioner of Police
(represented by Ms Leanne Atkins of WA Police)
- Respondent:** Andraste Holdings Pty Ltd
(represented by Mr Peter Fraser of Dwyer Durack)
- Observers:** Ms Lynne Taylor, sole Director of Andraste Holdings Pty Ltd
Sergeant Trevor Atkins of WA Police
- Commission:** Mr Eddie Watling (Deputy Chairperson)
Dr Eric Isaachsen (Member)
Mr Greg Joyce (Member)
- Matter:** Complaint for disciplinary action pursuant to section 95 of
the *Liquor Control Act 1988*.
- Premises:** Pier Hotel, The Esplanade, Port Hedland
- Date of Hearing:** 13 September 2011
- Date of Determination:** 1 November 2011

Determination:

1. The interim order of the Director of Liquor Licensing is affirmed and the following conditions imposed on the licence:
 - a) From 11:00pm to midnight, no liquor is to be sold or supplied for consumption on the premises in any of the following ways:
 - (i) In any vessels with a measurement capacity exceeding 750ml, except vessels containing premixed drinks e.g. ready to drink spirit mixes (RTDs) which shall not exceed 375ml;
 - (ii) In non-standard measures of spirits (i.e. no more than 50ml of spirits is permitted in any vessel).

- b) From 11:00pm to midnight, the licensee is prohibited from selling and supplying pre-mixed drinks (e.g. RTDs) where the liquor contains 5% or more concentration of ethanol at 20 degrees celsius.
 - c) The licensee is prohibited from selling and supplying beverages in such a way that would encourage rapid consumption of liquor e.g. (but not limited to) unadulterated spirits or liqueur in a shot glass);or drinks known as laybacks, shooters, test tubes, jelly shots, blasters or bombs or any other emotive title.
 - d) No liquor is supplied mixed with energy drinks. For the purposes of this condition energy drinks has the same meaning as formulated caffeinated beverage within the Australia and New Zealand Food Standards Code with a composition of 145mg/l of caffeine or greater.
 - e) Persons (other than “an authorised person”) are prohibited from entering or re-entering the licensed premises 30 minutes prior to the close of trading prescribed on the licence or permit.
 - f) On Friday and Saturday from 7:30pm to midnight and then continuing to 1:00pm the next day, crowd controllers licensed (or persons authorised to undertake crowd control activities on licensed premises but whom are exempted from the requirement to obtain and hold a crowd controller’s licence by virtue of regulation 4 of the *Security and Related Activities (Control) Regulations 1997*) under the *Security and Related Activities (Control) Act 1996*, are to be employed to monitor the licensed premises at a ratio of three (3) for the first 100 patrons and one (1) crowd controller for each additional 100 patrons or part thereof, with a minimum of three (3) crowd controllers to be stationed outside the premises to manage and disperse patrons after closing.
 - g) If there is an inconsistency between these conditions and any other condition to which the licence or permit is subject, the condition that is more onerous for the licensee prevails.
2. Pursuant to section 96 (1)(m) of *the Liquor Control Act 1988*, the Respondent shall pay a monetary penalty of \$5,000. The Respondent shall lodge with the Commission within 28 days of the publication of this determination evidence of payment of the penalty.
 3. The Respondent shall comply with the policy (as amended 7 June 2011) of the Department of Racing, Gaming and Liquor for Minimum Standards of CCTV (Closed Circuit Television) Security Systems and in particular the 12 location layout plan **attached** to this determination

Introduction

- 1 The Commissioner of Police lodged a complaint with the Liquor Commission (“the Commission”) pursuant to section 95 of the *Liquor Control Act 1988* (“the Act”) against the Respondent on 31 May 2011.
- 2 On 26 July 2011 the Commissioner of Police lodged an amended complaint to the Commission.
- 3 Pursuant to section 95(6) of the Act the Director of Liquor Licensing (“the Director”) on 1 August 2011 imposed a range of interim conditions on the Respondent to have effect pending determination of the complaint.
- 4 The complaint alleged that pursuant to section 95(4) of the Act there is a proper cause for disciplinary action on the following grounds:
 - The licensed premises are not properly managed in accordance with the Act [section 95(4)(b)];
 - The safety, health and welfare of persons who resort to the licensed premises is endangered by an act or neglect of the Respondent [section 95(4)(k)];
 - The Respondent has been given an infringement notice under section 167 of the Act and the modified penalty has been paid in accordance with that section [section 95(4)(fa)];
 - The Respondent has contravened a requirement of the Act or a term or condition of the licence [section 95(4)(e)(i)].
- 5 The remedies sought by the Commissioner of Police were:
 - Pursuant to section 96(1)(d) of the Act suspend the operation of the licence for a period as the Commission thinks fit;
 - Pursuant to section 96(1)(m) of the Act imposition of a monetary penalty on the respondent as the Commission sees fit;
 - Impose the following conditions upon the licence or on other terms as the Commission sees fit;
 - I. The Respondent to comply with conditions set out in the Director’s policy on Security at Licensed Premises and the policy on Minimum Standards Closed Circuit Television CCTV Security System: specifically:

- a. One camera with a field of view covering each bar service area and each area where the consumption of liquor takes place and each patron entrance and exit up to 10 metres;
 - b. A minimum of one camera with a field view covering the entrance and exit up to 10 metres;
 - c. Each camera to be installed with suitable vandal damage resistant camera housings;
 - d. Images recorded via the video surveillance system must be retained for a minimum of 14 days and the Respondent shall ensure that no person is able to delete or alter any recordings within the 14 day period; and
 - e. Access to, and copies of, recordings from the CCTV system are to be made available upon request to any sworn officer of the WA Police, Department of Racing Gaming and Liquor inspectors and any other authorised officer, as defined by section 3 of the Act.
- II. Crowd controllers licensed under the *Security and Related Activities (Control) Act 1996* are to be employed at a ratio of three (3) for the first hundred patrons and one (1) crowd controller for each additional 100 patrons or part thereof from 7:30pm (or the time of opening if after 8pm) on Friday and Saturday nights; and
- III. A minimum of three (3) crowd controllers licensed under the *Security and Related Activities (Control) Act 1996* to be stationed outside the premises after closing on Friday and Saturday night trading for a period of 1 hour; and
- IV. Crowd controllers to patrol the surrounding streets to ensure lawful dispersion of patrons and prevention of damage to property.
- V. From 11pm until the close of trading, no liquor is to be sold or supplied for consumption on the premises in the following ways:
 - a. In any vessel with a measurement capacity exceeding 750ml;
 - b. Double shots of spirits (i.e., no more than 30ml permitted in any vessel); and
 - c. Premixed drinks with a liquor content equal or greater than 5%.

- VI. The Respondent is prohibited from selling and supplying beverages in such a way that would encourage rapid consumption of liquor (e.g., but limited to, unadulterated spirits or liqueur in a shot glass); or drinks known as laybacks, shots, shooters, test tubes, jelly shots, blaster or bombs or any other emotive title.
 - VII. The Respondent is not to permit any liquor to be mixed with energy drinks by any person within the premises. 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.
 - VIII. Persons (other than an authorised person) are prohibited from entering or re-entering the licensed premises 30 minutes prior to the close of trading prescribed on the licence or permit
 - IX. If there is an inconsistency between these conditions and any other condition to which the licence or permit is subject, the condition that is more onerous for the Respondent prevails.
- 6 Counsel for the Commissioner of Police advised all parties on 29 August 2011 that the Commissioner of Police would not be pursuing the suspension of the licence as a penalty in this matter (see paragraph 5, first dot point, above).
- 7 On 29 August 2011 counsel for the Commissioner of Police provided all parties with a copy of correspondence dated 22 August 2011 from Superintendent John Ballantyne of WA Police to Ms Lynne Taylor concerning complaints made by her against Sergeant Richard Moore of Port Hedland Police Station. Superintendent Ballantyne concluded that a series of complaints were either not sustained, unfounded or could not be determined.
- 8 A hearing before the Commission, constituted in accordance with section 95(7a) of the Act, was held on 13 September 2011.

Submissions of the Commissioner of Police

- 9 The complaint is supported by a large volume of documents which relate to the computer aided dispatch system (CAD), information management system (IMS), infringement details, statements of police officers and incident reports from the WA Police and the Respondent. The statements of police officers are from the Officer in Charge of the Port Hedland Police Station and 5 officers of the Liquor Enforcement Unit (LEU).

- 10 In determining whether there is a proper cause for disciplinary action all that is required to be proved, on the balance of probabilities, is that one of the subsections in section 95(4) of the Act has been contravened.
- 11 By operation of section 5(2) of the Act the Commission, in carrying out its functions under the Act, is required to have regard to both the primary and secondary objects of the Act.
- 12 Section 100 of the Act provides that the conduct of business under the licence is always the responsibility of the licensee and shall be personally supervised and managed by a natural person.

Ground 1- The licensed premises are not properly managed

- 13 The Commissioner of Police provided a number of examples which it is alleged demonstrate a lack of management:
 - Since December 2007 there have been 15 infringement notices issued by the WA Police to the licensee and approved manager for a range of offences which show a lack of management action. The modified fines have been paid;
 - 69 CAD reports for police assistance from January 2009 to March 2011 for a range of incidents including drunkenness, assault, patrons refusing to leave the premises and disturbances outside the premises;
 - The IMS contains 34 relevant offences linked to the premises from 1 January 2009 to 31 March 2011. These offences are both inside and outside the premises and include assault, disorderly behaviour and grievous bodily harm;
 - LEU officers conducted an audit in respect of the incident register. Incidents were not recorded on the prescribed form. A reconciliation between the CAD and IMS systems and the incident register revealed discrepancies. The respondent failed to record 5 incidents from the IMS system and 9 from the CAD system for the period stated in the paragraph above. This is an offence under section 116A(2) of the Act;
 - LEU officers conducted an audit of the responsible service of alcohol training register. A condition of the licence, operative since 2004, is that approved managers are to attend cultural awareness training by a local indigenous training provider. No records were provided in relation to any staff ever

completing the course. This is an offence under section 110(1)(aa) of the Act;

- The Officer in Charge of Port Hedland Police Station, Sergeant Richard Moore, met with Ms Lynne Taylor to discuss remedies to reduce anti-social behaviour and incidents requiring police attendance. At the time Ms Taylor was cooperative and indicated she would assist in implementing strategies to reduce anti-social behaviour and alcohol related crime. Sergeant Moore commented that he observed a continuation of offences related to the premises and the majority of incidents that police are called to attend take place at or after closing. There is a lack of intervention by management and staff during incidents involving patrons;
- In 2009, LEU officers engaged Ms Lynne Taylor and management to highlight the ongoing issues at the premises. Several solutions and remedies were suggested to assist the premises in reducing the anti-social behaviour and alcohol related harm. Ms Taylor was not open to or willing to cooperate with police to implement recommendations in an effort to reduce anti-social behaviour and alcohol related crime. There is a permissive attitude by Ms Taylor who considers her patrons' behaviour is not her problem;
- Between 2 April 2011 and 3 April 2011 LEU officers attended the premises and observed a lack of management. Patrons were observed acting in a disorderly manner without management intervention. Management did not appear to discourage the rapid consumption of liquor in line with responsible service. At the conclusion of both evenings most patrons remained outside the premises and several appeared drunk and acted in a disorderly manner. There was no attempt to disperse the crowd.

Ground 2- The safety, health and welfare of persons who resort to the licensed premises is endangered

- 14 The Commissioner of Police alleges for all the reasons stated in paragraph 13 above that the safety, health and welfare of patrons is endangered. The CAD and IMS system reports reveal a high level of fighting and assaults amongst patrons. This occurs inside and outside the premises and mainly at closing time.
- 15 Sergeant Richard Moore in his statement dated 6 May 2011 says at paragraph 95 *“Continued issues of this nature; I believe will result in the death of a patron as a result of alcohol consumption at the Pier Hotel”*.

- 16 Sergeant Moore provided a detailed statement which chronicles a series of events inside and outside the licensed premises of fighting, assaults and anti-social behaviour involving both male and female persons.

Ground 3- The Respondent has been given an infringement notice and the modified penalty has been paid

- 17 The Commissioner of Police provided evidence that since December 2007, 15 infringement notices were issued pursuant to section 167 of the Act and the modified fine paid by the licensee.

Ground 4- The Respondent has contravened a requirement of the Act or a term or condition of the licence

- 18 The Commissioner of Police produced evidence on two separate matters supporting this ground:
- On 19 June 2008 the Respondent was charged with four counts of trading outside permitted hours contrary to section 111(1)(a) of the Act. It had continued to trade beyond permitted hours after the expiration of an extended trading permit ("ETP"). On 28 July 2008 the Respondent pleaded guilty to all four charges and received a penalty of \$400 per each charge;
 - On 4 April 2011, officers attended at the licensed premises and requested the incident register. A diary was produced to the officer that did not comply with the provisions of the Act or record details required by the *Liquor Control Regulations 1989*. The diary contains a notation by a Sergeant on 12 December 2008 that the diary was non-compliant, however, it continued to be used by staff to record incidents after that date. The respondent did not comply with the requirements of the Act in respect of the incident register detailed in paragraph 13 above.

Submissions by the Respondent

- 19 The Respondent conceded grounds 3 and 4 of the complaint and that there is a proper cause for disciplinary action pursuant to section 96(1) of the Act.
- 20 In respect of the infringement notices, whilst 15 notices were issued, due to the strict liability provisions of the Act they related to only 7 separate incidents. The infringements were incurred over 3 evenings during a 3 year period. Ms Lynne Taylor explained that the decision to pay the infringements was a commercial one and she was unaware of the implications of paying the infringements.

- 21 With respect to the Court convictions, whilst 4 breaches are noted they all relate to trading outside the ETP between 25 May 2008 and 19 June 2008. The explanation provided by the licensee for these 4 breaches was that they had overlooked the expiration of the existing ETP.
- 22 It is important to note that the proceedings before the Commission are not proceedings under sections 64 or 117 of the Act which provide for complaints in the vicinity of the licensed premises. Hence, when the CAD incident reports are analysed in this manner only 34 incidents have involved patrons of the Pier hotel on the face of the reports. Similarly notice should be taken of the fact that many of these reports were initiated by persons in authority at the premises as part of the management process. Positive action should not adversely reflect on management.
- 23 Similarly a breakdown of the incidents in the IMS reports shows that of the 32 incidents, 16 relate to incidents inside the venue and 17 outside. Given that the premises can cater for 958 patrons and frequently does, the number of incidents must be placed in this context.
- 24 It was submitted that, when considering the incident reports, incidents that fall into the following categories should be disregarded:
- incidents relating to persons who have been refused entry to the venue declining to leave and causing further disturbance;
 - incidents which, on the face of them, do not involve patrons of the hotel and do not occur on licensed premises.
- 25 The reported incidents from the CAD and IMS systems should be considered in conjunction with the observations of Ms Lynne Taylor that there is a prevalence of drug usage in the community and evidence of usage on the premises found in the toilets.
- 26 The Commissioner of Police alleges that the licensee and the approved manager committed an offence under section 115(1)(a) of the Act in permitting drunkenness on the licensed premises. It is not sufficient for the Commissioner of Police simply to allege this; rather there must be evidence upon which such a finding is made and the criteria under section 3(A)(1) of the Act must be established.
- 27 The Respondent stated that Sergeant Moore cannot be considered an unbiased witness and that Ms Lynne Taylor had lodged a complaint on 4 April 2011, to WA Police against Sergeant Moore. In any event Sergeant Moore's statement contains a range of irrelevant material and is primarily descriptive of the CAD and IMS reports. In respect of the meeting with Sergeant Moore it is unrealistic to employ a

further 8 crowd controllers because they are unavailable and it is not the responsibility of the Respondent to provide CCTV street coverage.

- 28 The Respondent submitted that the suggestion by the Commissioner of Police that crowd controllers employed by the Respondent should patrol streets and areas in the neighbourhood of the premises particularly at closing time is not acceptable. Neither the Respondent nor the crowd controllers have jurisdiction to do this under the *Security and Related Activities (Control) Act 1996* and would create an unacceptable liability for the Respondent.
- 29 With regard to the condition of the licence that approved managers are to attend cultural awareness training by a local indigenous training provider, this was not intended to go beyond 12 months from introduction in 2004. The licensee was not aware that the condition was still a part of the license.
- 30 The Respondent stated that it had no objections to the conditions imposed by the Director on the licence and referred to in paragraph 3 above.

Statement by Ms Lynne Taylor

- 31 Ms Lynne Taylor made a statement dated 1 September 2011. Her statement included the following points:
- Despite due diligence, she has had difficulty recruiting crowd controllers;
 - There is a lack of police presence around the premises particularly at closing time;
 - It is not the role of crowd controllers to patrol the streets in the neighbourhood, this should be carried out by the police;
 - The Respondent should not be made to place CCTV cameras in the street;
 - Many problems in the community are associated with drug usage and it is not the Respondent's duty to deal with this;
 - There are insufficient taxis available at closing time to meet demand;
 - Fly in fly out workers cause most of the problems.

Consent by parties at the hearing

32 At the hearing agreement was reached between the parties on two matters:

- Firstly in respect of the CCTV system at the premises it was agreed by both parties that the positioning of cameras on the attached plan is satisfactory and complies with the policy guidelines of the Director. Specifically this requires the use of twelve cameras in the positions set out including 3 cameras positioned at the 3 entrances. In addition, the Commissioner of Police requires the CCTV footage to be available on request and of sufficient clarity in accordance with the policy of the Department of Racing, Gaming and Liquor (“the Department”);
- Secondly, agreement was reached that the Respondent is not required to provide crowd controllers for deployment in the nearby streets or neighbourhood of the premises, however the Respondent is required to comply with the ratios set out in the policy guidelines of the Department on crowd controllers

Determination

33 Section 95 of the Act empowers the Commission to take disciplinary action in respect of a complaint lodged under this section. Section 96 sets out the action the Commission may take if it is satisfied on a balance of probabilities that the grounds have been made out.

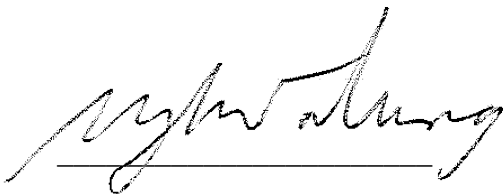
34 Having considered the written and oral submissions of both parties to the proceedings and weighed up the differing views, the Commission is satisfied on the balance of probabilities that all 4 grounds have been made out and there is a proper cause for disciplinary action. Whilst the Respondent has conceded grounds 3 and 4 there is also sufficient evidence to satisfy the Commission that grounds 1 and 2 are also made out. Accordingly a monetary penalty of \$5,000 is ordered.

35 In making its determination the Commission has taken into account the points made by the Respondent particularly that many of the incidents occur off the premises, the initiatives that have been taken by management and that many of the incidents referred to involve the Respondent taking positive managerial action by ejecting or refusing admittance of patrons. The evidence of the Commissioner of Police is that the Respondent needs to take further measures to improve its management.

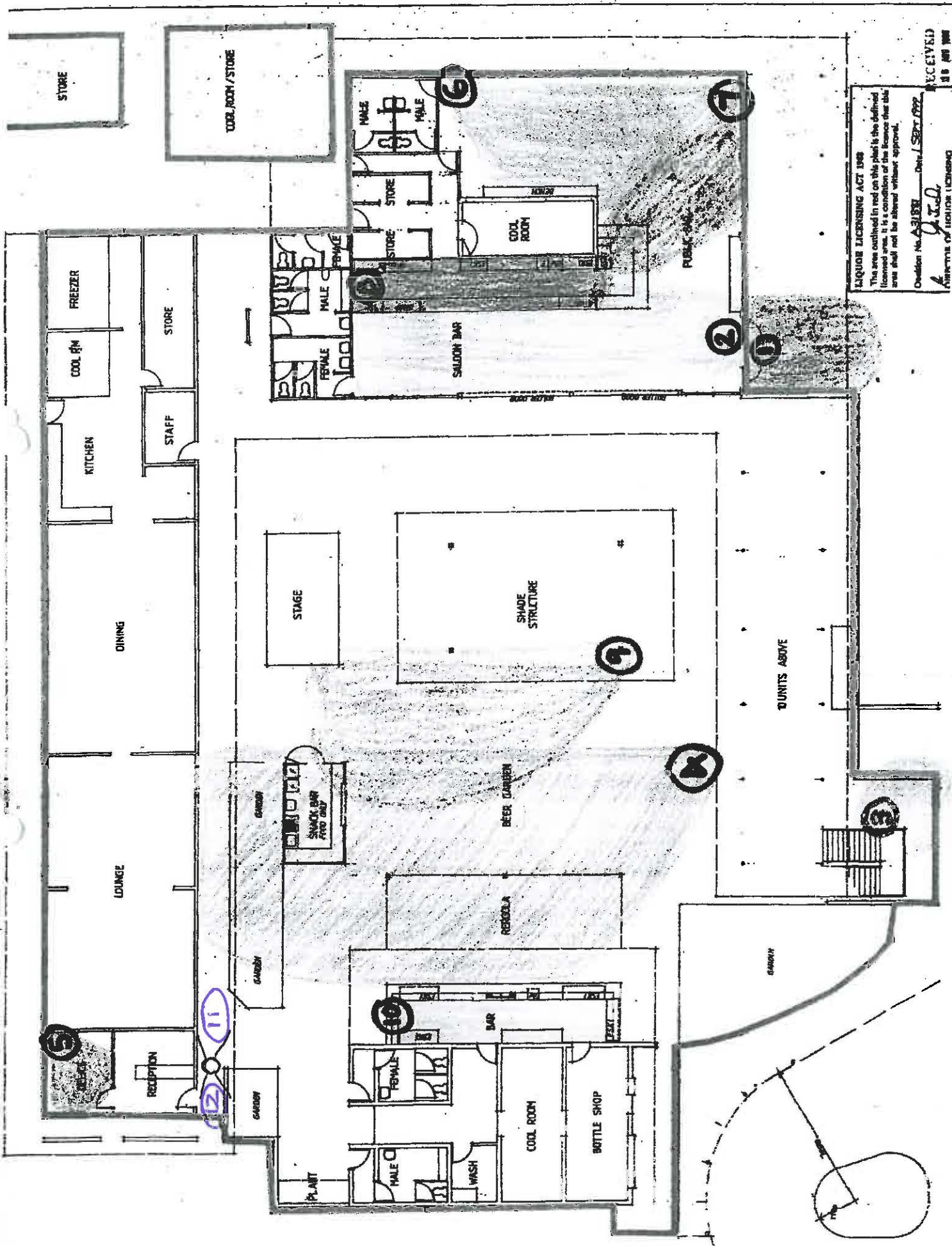
36 The Commission is of the view that the conditions imposed by the Director will provide a basis for an improvement in the management of the premises and has included these in the determination

37 In making this determination the Commission makes the following points:

- The Commission recognises that the licensed premises are difficult to manage given the high number of fly in fly out patrons and the cultural issues associated with the local indigenous population. However this should not be used as an excuse for poor practices and the responsibility is always with the Respondent to manage the premises properly;
- The responsibility to provide the requisite number of crowd controllers rests with the Respondent. It is not acceptable for the Respondent to say it cannot recruit crowd controllers. This is a risk the Respondent must manage and ensure compliance with the policy;
- Proper management of the premises in the future will require the Respondent and the Commissioner of Police to work together and involve others such as the Local Authority and the Taxi Control Board where issues are beyond the powers of the Police and licensee.



EDDIE WATLING
DEPUTY CHAIRMAN



LIQUOR LICENSING ACT 1988
 This area outlined in red on this plan is the defined licensed area. It is a condition of the license that this area shall not be altered without approval.
 Decision No. 43188 Date: 1 SEPT 1997
 RECEIVED
 J. J. J. J.
 DEPARTMENT OF LICENSING