

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

Applicant: Rowtree Pty Ltd
(Represented by Ms Jacqui Treagus and Mr Brian Rowe, Directors)

Respondent: Director of Liquor Licensing
(Represented by Ms Janine Belling, Director Licensing, Department of Racing Gaming and Liquor)

Executive Director of Public Health
(Represented by Ms Lana White, State Solicitor's Office)

Other Parties: Senior Constable, Ron Wilson, Alcohol and Drug Co-ordination Unit, Mid West -Gascoyne

Senior Constable, Troy Andrich, Alcohol and Drug Co-ordination Unit, Mid West-Gascoyne

Mayor Ian Carpenter, City of Geraldton-Greenough

Commission: Mr Jim Freemantle (Chair)
Ms Helen Cogan
Ms Karen Lang

Date of Hearing: 10 February 2009

Date of Determination: 10 February 2009

Premises Name: Golden West Entertainment

Matter: Application for Review, Section 25 of the *Liquor Control Act 1988*

Introduction

This appeal before the Liquor Commission ("the Commission") was heard on 10 February 2009. After hearing the submissions from the parties to the proceeding the Commission determined to dismiss the appeal and indicated that the reasons for the determination will be published in due course. Provided below are the reasons of the Commission for having dismissed the appeal.

Background

Rowtrea Pty Ltd T/A Golden West Entertainment ("the Applicant") made application for the grant of a Special Facilities Licence (Transport) for a vehicle to be known as the "Limbusine" to operate in and around the Geraldton area.

Notices of Intervention were lodged on behalf of the Executive Director, Public Health and by Senior Constable Ron Wilson of Mid West Gascoyne Alcohol and Drug Co-ordination Unit.

The grounds of the objections primarily were that the grant of the application would not be in the public interest and contrary to the provisions of Section 74(1)(a) of the *Liquor Control Act 1988* ("the Act")

Decision of Director of Liquor Licensing

On 20 November 2008, the Director of Liquor Licensing ("the Director") determined to decline to grant the application on the grounds that the applicant had failed to establish on the balance of probabilities that the grant of the application would be in the public interest as provided by Section 38(2) of the Act. The reasons are as set out in the Decision of the Director dated 20 November 2008.

Application for Review

The Applicants lodged an application for review on 12 December 2008 on the following grounds:-

1. The finding by the Director that "... the Licensing Authority has cause to be concerned about the Applicants general regard for the *Liquor Control Act*" was unreasonable (Page 13 of the determination).

2. The concern expressed by the Director "... as to how the approved Manager, Mr Brian Rowe, who is also the designated bus driver will be able to personally supervise and manage the patrons whilst on the bus" was based on a misunderstanding of the supervision of patrons actually proposed (Page 14 of the determination).
3. Denial of natural justice in that the Director stated "... the lack of toilet facilities on the vehicle is a concern to me ... I note that clients have the option of hiring a toilet facility to be mounted on a trailer at the rear of the bus. But this in my opinion is not sufficient to support a liquor licence" (Page 15 of the Determination).

In spite of the concerns of the Director they were not informed or directed that there was any issue in regards to the toilet arrangements they had put in place.

4. The Director erred on the weight of evidence in concluding "... the applicant has not satisfactorily discharged its burden under Section 38(2) of the Act. The applicant has not satisfied me that on the balance of probabilities the grant of this licence is in the public interest..." (Page 15 of the Determination).

Then following material was lodged with the Commission subsequent to the Appeal:

- a) Letter to Senior Constable Wilson dated 29 January 2009 by the Applicants; and
- b) Memo to Liquor Commission dated 22 January 2009 by the Applicants.

Both of these submissions provide the Commission with difficulties in that much of the material relates to conversations and discussions with the WA Police which has resulted in a number of issues raised in the objection lodged by the WA Police being subsequently resolved.

As this occurred subsequent to the Directors decision the Commission is unable to consider it.

Furthermore, it is quite apparent that the Applicants have continued to work consistently to address issues raised in the Directors determination and address issues raised by the Objectors and which the Director took into account.

The current circumstances are quite different as they have continued to change from the time when the application was lodged with the Director to

the time when the Director issued his determination and again different from when the appeal was lodged

Intervention of the Director

Ms J Belling, Director of Licensing argued that:

- a) the application lacked clarity and was quite inconsistent.
- b) it lacked specific measures to be taken in carrying out their obligations under the Act i.e. little explanation of how things were to be achieved.
- c) there was little explanation in the application as to how the Applicant could discharge its obligation under Section 100 of the Act.
- d) emphasised a number of points raised by the Director in his determination.

Intervention by the Director of Health

Ms Lana White on behalf of the Executive Director Public Health expressed concern:

- a) about the ability to monitor and control behaviour.;
- b) hostesses role in the control of patrons;
- c) opposition to BYO liquor; and
- d) that if a licence was granted specific conditions laid out in their letter of 11 July 2008 be imposed.

In dismissing the Application the Commissions' reasons were as follows:

Ground 1 - Cause for concern about applicants general regard for the *Liquor Control Act 1988*.

- a) The applicant argued that the concerns expressed by the Director were based on comments made by the Geraldton Police which indeed they were (Page 13 of Directors Determination). However, a meeting held with the Applicant and Senior Constable Wilson on 3 December, has now resulted in Senior Constable Wilson's support of the Applicant's application (on the agreed understanding that there is a security guard on board, a toilet fitted and that the approved manager is not the driver).

The approved manager is to be in full control of liquor sales and distribution and control of patrons at all times; the driver's role is only to drive the vehicle.

As this information was not available to the Director at the time of the determination, the Commission is unable to deal with it.

- b) Applicants argue that the Applicant has obtained a liquor permit from the Council for patrons to consume alcohol in a number of public places around Geraldton. This conflicts with the Senior Constable Andrich's Statement quoted in Page 13 of the Determination.

When this licence was obtained and what it permitted was not made clear by the Applicant.

Taking into account also Senior Constable Wilson's statement (Page 13 of Director's determination) concerning the tours, the Commission believes that there were reasonable grounds for concern about the Applicant's regard for and understanding of their responsibilities under the Act. Although the majority of the issues have been resolved since, as this information was not available to the Director at the time of the Determination it has to be disregarded by the Commission.

Ground 2 - Ability of approved Manager, Mr Rowe, to adequately supervise as he is the designated driver.

The statements by Senior Constables Wilson and Andrich (page 12 of the determination) gave rise to the Director's concerns. It is unclear as to whether the specific undertaking to have an additional person to Mr Rowe was made clear to the Director or was clarified subsequently.

Given Senior Constable's Andrich and Wilson's statements, there were reasonable grounds for concern about Mr Rowe's capacity to supervise to the required standards as well as drive the bus.

Ground 3 – Toilet Facilities

The sequence of events here is anything but clear. The applicants claim denial of natural justice to the extent they were not informed that there was any issue in regard to toilet arrangements.

This claim is inconsistent with the series of correspondence between the Applicants and the Department of Racing, Gaming and Liquor e.g. email dated 2 August 2008 and letter dated 28 July 2008 from the Applicant, Ms Jacqui Treagus to Ms Pam Harris and Mr Leigh Buckman respectively.

The Commission thus does not consider there was any denial of natural justice.

Ground 4 - Director erred on the weight of evidence in not being satisfied that the grant of the licence was in the public interest.

The Applicant argued that the Director erred in his findings as to the likelihood of harm and ill-health concerns based on the evidence which was before him (that evidence being the absence of adverse history of the Applicant's bus business, the fact that the Health Department evidence was non-specific and the unique nature of the Applicant's proposal).

In his determination, the Director took note of and placed significant weight on the submission of the Executive Director Public Health and went to some lengths to support his position that the likelihood of harm was sufficient to make him refuse the application. His reasoning is set out at length on Pages 14 and 15 of the determination.

The Applicant argued that the Director erred in having too much regard for the Executive Director Public Health's submission which was a general paper on harm occasioned by alcohol and not specific to harm which might be caused by this particular situation.

The Commission accepts that the generality of the Executive Director Public Health's submission does leave it open to challenge in this specific regard by the applicant, however, the Director has gone to considerable length to substantiate his position guided by the Supreme Court's definitive position in *Executive Director of Health v Lily Creek International Pty Ltd and Ors* [2002] WASCA258 and *Greaves J in Gull Petroleum (WA) Pty Ltd LLC No. 13/98*.

On carefully reviewing the material before the Director, the Commission came to the same conclusion as the Director that the Applicants had not satisfied the requirements of Section 38(2) and (4).

Thus, Ground 4 fails.

In view of the extent and importance of developments subsequent to the determination of the Director of the License Application, the Commission came to the view that the applicants should resubmit their application to the Director including all the relevant new material.

A handwritten signature in black ink, appearing to read 'Jim Freemantle', written over a horizontal line.

Mr Jim Freemantle
CHAIRMAN