

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

Applicant: Equanimity Investments Pty Ltd
(represented by Mr Patrick Ryan, Ms Lynn Jones and Mr John Senczuk)

Intervener: The Commissioner of Police
(represented by Ms Leanne Atkins of WA Police)

Objector: Salmon Point Holdings Pty Ltd

Commission: Ms Helen Cogan
Mr Greg Joyce
Dr Eric Isaachsen

Matter: Application for review of a decision of a single Commissioner pursuant to section 28 of the *Liquor Control Act 1988*.

Premises: Emphyrean Function Centre, situated at 12 Lake Street, Northbridge

Date of Hearing: 1 August 2011

Date of Determination: 6 September 2011

Determination The Application is approved

Authorities considered in the Determination:

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

Introduction

- 1 On 22 July 2010 Equanimity Investments Pty Ltd (“the applicant”), the licensee of premises known as the Emyrean Function Centre and located at 12 Lake Street, Northbridge, lodged an application pursuant to section 64 of the *Liquor Control Act 1988* (“the Act”) to vary the trading conditions of its licence. Specifically, the applicant was seeking to vary the permitted trading hours of the premises from 7.00am to 10.00pm to 7.00am to 12 midnight.
- 2 Pursuant to section 24 of the Act, the Director of Liquor Licensing referred the application to the Commission for determination. A Notice of Intervention under section 69 of the Act was lodged by the Commissioner of Police and a Notice of Objection, pursuant to section 74 of the Act, was lodged by Salmon Point Holdings Pty Ltd.
- 3 The application was determined on the written submissions of the parties by the Commission constituted by one Commissioner. In decision LC 11/2011, dated 12 April 2011, the application was refused.
- 4 The applicant now appeals the decision of the single Commissioner to the Commission constituted in accordance with section 28(4a) of the Act.
- 5 A hearing in respect of the appeal was held on 1 August 2011.

Submissions on behalf of Equanimity Investments Pty Ltd

- 6 It was submitted that since the applicant was first granted its special facility licence it has grown from a fledgling company with just three staff to a vibrant company with 15 staff. The Emyrean Function Centre comprises two main business components:
 - first, it provides a training academy that teaches courses in Certificate I, II and III Hospitality together with Security Operations, Barista and Responsible Service of Alcohol (RSA) courses. Many of the participants in these training courses are disadvantaged or disabled and include indigenous students and students from culturally and linguistically diverse backgrounds. Over 100 students have graduated to date, and in the next 12 months another 400 students are expected to graduate; and
 - secondly, it operates as a function centre which caters for corporate clients, charities and private events including film nights, award presentations and annual general meetings.
- 7 The training component of its business accounts for approximately 85% of annual turnover with the function component accounting for the remaining 15%. Hospitality students need to complete 36 mandatory work experience shifts in order to gain their Certificate III and consequently many of the functions held at the venue are partly staffed by these students. The proposed extension of the trading hours will enable the venue to

host more corporate functions thereby facilitating more work experience opportunities for students.

8 The applicant submitted a Public Interest Assessment (PIA) in support of its application outlining its style of operation and broadly addressing the matters set out in section 38(4) of the Act. In the 14 months since the venue commenced operating more than 35,000 people have attended functions at the centre with only one incident having been recorded. In addition, the Emyrean Function Centre was the Winner of the 2011 Australian Business Award for Community Contribution in its industry classification and a finalist in the WA Training Awards, which according to the applicant was an acknowledgement of its corporate ethos of excellence.

9 It was submitted by the applicant that:

- it wishes to provide real work experience in real working conditions for academy students. This work experience includes all the stresses and strains of venue and function management late at night and especially at closing times which is a requirement of the latest training model;
- it is planning the development of kitchen facilities to groups such as the Esther Foundation, in real time environments with surplus food being distributed to local groups through the Manna Foundation;
- it has a substantial client list requesting that they extend their permitted trading hours to 12 midnight so that their guests can enjoy themselves in the environment of the function centre;
- the proposed extension of trading hours will reduce the migration of patrons to other venues in the area. Following some events at the function centre which currently cease at 10.00pm, up to 100 patrons have been escorted by security personnel to other venues in the area which has the potential for problems in the streets or at other venues; and
- if the application was approved, conditions can be imposed to minimise any associated risks such as a 10.00pm lockout and only one drink per client at a time will be served in the last hour of operation.

10 More recently, the Metcalf Playhouse has been established at the venue which will bring to Perth a series of contemporary plays featuring some of Australia's best actors. Given the closure of the Playhouse Theatre and the costs of staging a production at the new State Theatre, Emyrean's theatre will be Perth's newest live theatre venue. The operation of the Emyrean Function Centre is not unlike the operation of the State Theatre in Northbridge which was recently granted a special facility licence to sell and supply liquor to 12 midnight.

Submissions on behalf of the objector

- 11 It was submitted by the objector that the grant of the application would not be in the public interest. In the original decision of the Commission granting the special facility licence in respect of this venue, the Commission noted that the greatest demand for police and ambulance services in Northbridge was between the hours of 11.00pm and 3.00am and therefore extending the permitted hours of the venue and having hundreds of patrons being discharged onto the streets during this peak incident and demand period would not be in the public interest.
- 12 According to the objector, the applicant has provided no specific evidence of demand or market research to suggest that extending the trading hours would be in the public interest. Because some of the applicant's patrons may resort to other premises after closing, is not in itself justification to grant the application. It would appear that the applicant is trying to create a "nightclub" by stealth via the application for extension of trading hours. The objector believes that the underlying business plan of the applicant is to stretch the definition of a function to subvert the distinction between a special facility (function centre) licence and a nightclub or tavern licence by clever marketing.

Submissions on behalf of the intervener

- 13 Pursuant to section 69(6)(c)(ii) of the Act the Commissioner of Police intervened in these proceedings for the purpose of introducing evidence or making representations on the question of whether if the application was granted, public disorder or disturbance would be likely to result.
- 14 In this regard, evidence was submitted detailing police attendances in the vicinity of the Emyrean Function Centre from 1 July 2009 to 31 December 2010. Approximately 100 incidents of disorder or disturbance have been recorded, with about 33 of these incidents being alcohol related.
- 15 It was therefore submitted that the grant of the application is likely to exacerbate existing problems in the area.

Decision of the single Commissioner

- 16 In refusing the application, the single Commissioner, having considered the evidence before him, was of the view that the potential for harm that may result from the grant of the application outweighed the demand of patrons of the venue for the extension of trading hours.
- 17 The Commissioner was of the opinion that little had changed at the venue since the licence was first granted by the Commission, which regarded the restriction of trading hours as an essential element of minimising the extent of alcohol-related harm that was already occurring in the area.

Determination

- 18 On 6 December 2009 the Commission granted the applicant a special facility licence to operate between the hours of 7.00am and 10.00pm each day of the week. When determining that application, the Commission was satisfied that the grant of the licence was consistent with the objects of the Act, however the Commission was mindful of existing problems and social disorder in Northbridge and therefore restricted the hours of trade to 10.00pm.
- 19 The applicant now seeks to vary those trading hours to permit trading until 12 midnight.
- 20 The uncontroverted evidence of the applicant is that the Emyrean Function Centre is a well managed premises providing both function and training facilities. Since the grant of the licence the applicant has built a successful business with over 35,000 people attending functions at the venue and several hundred students have successfully completed hospitality and related training courses there. Many of the participants in the training courses are disadvantaged or disabled and include indigenous students and students from culturally and linguistically diverse backgrounds.
- 21 The application is essentially predicated on several grounds. First, to respond to the demand by persons attending functions at the venue to be able to use the facilities past 10.00pm; secondly, to enhance the training and work experience opportunities for students; thirdly to cater to persons attending live theatre performances at the premises; and fourthly, to minimise the migration of patrons into other parts of Northbridge after 10.00pm. The evidence presented by the applicant satisfies the Commission that the grant of this application would be catering to the requirements of consumers for liquor and related services at the venue (refer section 5(1)(c) of the Act).
- 22 However, one of the primary objects of the Act is to minimise harm caused to people, or any group of people, due to the use of liquor (refer section 5(1)(b)). 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*).
- 23 The Commission, when first granting the licence was very mindful of the evidence presented relating to existing levels of harm in the locality of the premises which resulted in the licence being subject to restricted trading hours. The Commission now has the advantage of being able to assess, over a number of months, the impact of the premises and its manner of trading on the locality. In this regard, The Commissions concludes on the evidence presented that the Emyrean Function Centre has been well managed in accordance with the Act and its licence conditions and has not negatively impacted on the surrounding locality or contributed to existing levels of harm in the area. The Commission also notes that the operation of this venue is not unlike the nearby State Theatre, which can trade until 12 midnight.

- 24 In weighing and balancing the competing interests in this application the Commission is satisfied that the grant of the application is in the public interest. The objector has failed to discharge its onus under section 73(10) of the Act. The objector asserted that the applicant is merely trying to create a 'nightclub' by stealth. There is no evidence to support this claim, however if the licensing authority is presented with any evidence in the future that trading at the venue is not in accordance with the licence and its trading conditions remedies are available under sections 64 and 95 of the Act.
- 25 The application is therefore approved.

A handwritten signature in black ink, appearing to read 'Helen Cogan', written in a cursive style.

HELEN COGAN
MEMBER