A note from the Director General on applying for a liquor licence

Disappointed applicants and commentators on liquor licensing decisions often do notunderstand why an apparent good idea for a “bar” is not approved by the liquor licensing authority.

While decisions of the licensing authority are governed by the *Liquor Control Act 1988*, an Act comprising some 320 pages, they are also governed by precedent decisions of the Supreme Court of Western Australia, with the Director of Liquor Licensing subject to further precedent decisions of the Liquor Commission. Accordingly, licensing authority decisions must be evidentiary based with each application dealt with on its merits, and all parties to the proceedings being afforded procedural fairness.

Any person has a general right of objection to an application and the Executive Director Public Health, Commissioner of Police and the relevant local authority not only have the right to intervene for the purpose of introducing evidence or making representation in relation to an application, but they may also exercise that right by way of an objection.

The private interest of an applicant wishing to establish a liquor outlet is not to be confused with the public interest. The requirements of the Act are directed at the licensing authority taking a balanced approach to the granting of new applications.

Even if a local authority supports an application, it would be invalid for the licensing authority to simply apply a planning decision made by planning authorities, rather than determining the merits of the application under the Act.

It is not open for the licensing authority to make a finding to grant an application because it would be a good idea based on some general rule that it has formulated for itself on knowledge and experience gained in the determinations of other applications.

As a specialist administrative body in liquor licensing matters, its findings of fact are only entitled to considerable weight when they involve an assessment of relevant issues peculiar to the field of liquor licensing; for example, the availability of liquor supplies, assessment of contemporary standards and accessibility of licensed premises to the public in the proposed locality.

There is an onus of proof for applicants to establish the merit of their application; section 38(2) of the Act states that *“an applicant … must satisfy the licensing authority that granting the application is in the public interest.”*

The public interest, as ascertained from the scope and purpose of the Act, involves catering for the requirements of consumers of liquor and to have liquor outlets consistent with good order and proprietary in relation to the distribution and consumption of liquor. What is often overlooked is that one of the primary objects of

the Act is to regulate the sale and supply of liquor and that the disposition of the Act, read as a whole, is to regulate that good order and proprietary.

The proliferation of liquor outlets is not in the public interest. To increase the number of licensed premises without any real and demonstrable consumer requirement, would represent proliferation without justification.

The licensing authority must also weigh and balance the requirements of consumers against the object of minimising harm or ill-health caused to people, or any group of people due to the use of liquor.

It is a matter for the licensing authority to decide what weight to give to the competing interests and other relevant considerations.

For an applicant to discharge its onus under section 38(2), it must address both the positive and negative impacts that the grant of the application will have on the local community. The Liquor Commission has confirmed that it is not sufficient for applicants to merely express opinions about the perceived benefits of their application without an appropriate level of evidence to support those opinions and assertions.

This means applicants must adduce sufficient evidence to demonstrate the positive aspects of their application, including that the proposed licence will cater for the requirements for consumers for liquor and related services. The Liquor Commission has determined that failing to do this means "… *the granting of licences under the Act would become arbitrary and not in accordance with the objects of the Act*." (LC 32/2010: Element WA Pty Ltd)

Furthermore, *"...letters of support from business people purporting to speak on behalf of consumers simply does not go far enough to satisfy the Commission that the general public has a requirement for liquor and related services…"* (LC 17/2010: Busswater Pty Ltd)

Many applicants and commentators also question why the Director of Liquor Licensing does not provide more guidance and assistance to applicants in the preparation and substantiation of their application.

Expecting the Director to seek further submissions from an applicant to address deficiencies in an application would compromise the impartiality of the Director as an administrative decision maker. If this were the case, would the Director also be expected to seek further information from an objector or intervener to ensure it was sufficiently supported? If such information was provided, would the Director again be expected to approach the applicant to rebut the objection through the provision of further information? In this regard, the Liquor Commission in Harold

Thomas James Blakely (LC 44/2010) ruled:

"It is not incumbent on the Director to determine what evidence an applicant

should ultimately submit in order to discharge its obligation under s38(2). The

licensing authority, however constituted, cannot run an application, objection or intervention on behalf a particular party as this would place the licensing authority in an unsustainable position."

For more information visit:

http://www.rgl.wa.gov.au/ResourceFiles/Policies/PublicInterestAssessment.pdf