

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

- Applicant:** David Hancock
75 -77 Aberdeen Street
NORTHBRIDGE WA 6003
(Represented by Mr P Fraser (Ilberys))
- Other Parties:** The Director of Public Health (represented by Ms R King, State Solicitor's office) appeared as an interested party.
Mr K L Yoon Managing Director, Aberdeen Lodge
Sergeant Parke, WA Police
Mr T. Caporn
- Commission:** J M Freemantle (Chair)
D Warnock
E Watling
- Date of Hearing:** 31st January 2008
- Date of Determination:** 14th February 2008
- Premises Name:** Hotel Bambu
- Matter:** Application for Review of the Decision of Director of Liquor Licensing (Decision No. A185157).
- Determination:** The decision of the Director of Liquor Licensing stand.
Costs of \$2,000 to be met by Applicant.
- Reasons:** The application is based on four main grounds.
1. Denial of natural justice and/or procedural fairness in that no opportunity was given to respond to
 - a) A departmental inspection report alluding to the state of the premises
 - b) Advertisements appearing on an internet site
 - c) Verbal submissions from the Police
 - d) Observations of the Director

In respect of points 1. a), b) and c) the Commission put some weight on the argument of denial of natural justice, however whether there was or was not a degree of denial of natural justice, the Commission's determination did not turn on any of these 3 points. (The Commission is aware the file on which the inspector's report is lodged, was available to the applicant.)

In respect of point d) the Director is entitled to form certain views based on visits to the applicant's venue (not denied by the Applicant).

The Commission did not accept that there was any material denial of natural justice in these views not being given to the Applicant for comment.

In any event the Commission's decision did not turn on point d)

2. That the Director erred in law by finding that the applicant's venue was a BYO facility.

The Director's decision states that "According to Police, the Applicant currently trades as a BYO facility....."

Also the Applicant submission at item 61, states that "Given that it is acknowledged the premises currently operate as a BYO facility....."

It would therefore seem reasonable to the Commission that, in fact, that is the way the premises currently operate.

3. & 4. The findings set out below were not supported by evidence or the evidence was insufficient.

- a) Further harm or ill health would be caused
- b) Amenity of the area would be adversely affected.

In respect of harm or ill health, the Commission put some weight on the applicant's submission that the granting of a licence would enable greater control over the consumption of liquor.

However, the Commission accepts the Directors contention that grant of the license is not in the public interest on the grounds of potential increase in harm or ill health because:

- (i) the published and readily available search of Chikritzhs, Stockwell and others clearly demonstrates the relationship between outlet density and increased harm and ill health.
- (ii) the venue houses and attracts one of the generally accepted "at risk" groups in respect of alcohol consumption (18-28 years of age).

The Commission did not accept the applicant's submission that backpackers and their friends were not a high "at risk" group.

The Commission holds that the Director put appropriate weight on the submission by the Executive Director of Public Health.

The Commission accepts the Applicant's submission that the premises are in the Northbridge Entertainment Precinct and in determining matters such as noise and disturbance this fact should be accorded appropriate weight particularly in respect of affected residential areas should there be any. The Commission notes that there were no objections from residents.

On balance, the Commission accepts the Director's contention that there is the potential for negative impact on the amenity of the area.

Furthermore, research conducted in the East Sydney Policing area and published by NSW Government demonstrates a clear correlation between outlet density and incidence of crime and anti social behaviour.

5. The Director erred in finding the applicant had not satisfied the provisions of Section 38(2).

The Commission found that the Director had not erred in her finding that the applicants had not satisfied the requirements of Section 38(2).

The Commission held that the reasons given in her determination were sufficient to justify the conclusion she reached even if the Commission had fully upheld the first ground of appeal.

In the Commission's view its findings in relation to harm or ill health and loss of amenity set out earlier confirm that the requirements of Section 38(2) had not been met by the Applicants.

Other issues and observations

1. As the application failed the objection to the ETP by the Director of Public Health did not need to be considered.
2. The submission by Mr Yoon was not accepted by the Commission as it held that many of the issues raised by Mr Yoon were not relevant to the issue or otherwise of a license for these premises. The Commission accepted the Applicant's submission that much of the trouble to which Mr Yoon refers was caused by patrons of other establishments.
3. The submission of the Police was generally accepted by the Commission however the Commission did accept the Applicant's submission that

many of the behavioural issues were a result of patrons of surrounding premises causing problems.

4. The Commission placed little weight on the petition irrespective of the ability to check the veracity of the signatories? The Commission considered there would be a considerable degree of vested interest and little objectivity in the signatory group.
5. The Commission was not convinced that the control of the ingress and egress to the premises is adequate.

Costs

Costs associated with the Application are set at \$2,000 and are to be met by the Applicant.

A handwritten signature in black ink, appearing to be 'P. Smith', written in a cursive style.