

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Applicant: Kingplace Pty Ltd
(represented by Mr Dan Mossenson of Lavan Legal)

Premises: "Y Wines", West Swan
5051 West Swan Road, West Swan

Commission: J.M. Freemantle (Chairperson)
H. Cogan, D. Warnock (Members)

Date of Hearing: 11 April 2008

Date of Determination: 17 April 2008

Observers: Mr Rob Marshall of Y Wines, West Swan

Authorities referred to:

- *Sullivan v Dept of Transport (1978) 20- ALR 323, Deane, J*
- *Minister for Aboriginal Affairs v Peko Wallsend Ltd (1986) 186 CLR 24, Mason, J*
- *Associated Provincial Picture Houses Pty Ltd v Wednesday Corporation IRB 223, Greene, L.J.*

Application:

This is an application for a Review of the Decision by the Director of Liquor Licensing No. A187438 of 19 March 2008 under section 25 of the *Liquor Control Act 1988* particularly of the condition imposed, "the licensing authority being satisfied that the vineyard at the premises will yield sufficient produce to enable the licence to be issued in time to produce wine from the first vintage being imposed".

Determination:

The Commission has determined pursuant to section 25(4) of the *Liquor Control Act 1988* to vary the producer's licence conditions by removing the following conditions—

- the licensing authority being satisfied that the vineyard at the premises will yield sufficient produce to enable the licence to be issued in time to produce wine from the first vintage; and

- pursuant to section 62(4)(c) of the Act, the applicant seeking confirmation of the grant in time for the first vintage.

Therefore, the conditional producers licence will be subject to the following conditions –

- a Certificate of Local Government under section 39 of the Act being lodged;
- compliance with the *Local Government Act 1960*, *Health Act 1911* and any written law relating to the sewerage and drainage of these premises;
- all work being completed in accordance with the plans and specifications lodged;
- a final inspection by an Inspector of Licensed Premises being conducted to ensure that all requirements have been satisfactorily completed; and
- staff who will occupy supervisory positions successfully completing the nationally accredited unit of competency (THHBFBO9BH) “Provide responsible service of alcohol” within four weeks of the issue of the licence; and
- all servers of liquor successfully complete either the nationally accredited unit of competency (THHBFBO9B) “Provide responsible service of alcohol” or the non-accredited abridged course from one of the approved training providers in respect of this abridged course, within four weeks of the issue of the licence.

Reasons:

The application is made essentially on the grounds that:

- (1) the Director erred in his interpretation of section 57(a) of the Act;
- (2) the Applicant was denied natural justice in that his letter of 22 January 2008 was not properly considered and that the Applicant had not been given a fair or any hearing;.

Specifically, the Applicant argues that the Director having found:

“...the applicant has complied with all the necessary statutory criteria requirements and conditions precedent to the application being granted and that the grant of the application is in the public interest... ”,

erred by also finding:

“...the applicant does not, at this time, have a vineyard at the premises...the yields or has the potential to yield sufficient produce to enable the applicant to be granted an unconditional producer’s licence....the vineyard if not already planted with mature vines should have the imminent potential to yield sufficient produce upon the first vintage to become a genuine producer of liquor”.

The Director expressed the view that when read together, the paper interpretation to be applied to section 56, 57 and Regulation 10(a)(ii) is that the vineyard, if not already planted with mature vines, should have the *imminent* potential to yield sufficient produce upon the first vintage to become a genuine producer of liquor.

The Commission agrees that the sections under reference and the regulation need to be considered together.

However, section 57(a) states that for the grant of a producer's license an applicant must satisfy the licensing authority, "*....that being a genuine producer of liquor, or a person who the Director is satisfied will become a genuine producer of liquor, the applicant produces or will produce liquor of the kind sought to be authorised for sale under the licence in a manner to which section 56 applies;*"

The question for the Commission thus became quite simply as to whether sections 56 & 57 and the relevant regulation together imply that the potential for production of liquor in sufficient volume must be *imminent* within any reasonable definition of imminent or put another way, was the Director correct in inferring that the potential had to be immediate or imminent as section 57 does not specifically state so.

In this regard the director accepted that the necessary statutory criteria and conditions precedent to the application being granted had been met but argued that the interpretation of regulation 10 when read with sections 56 and 57 at least implies (and does not state) an imminent ability to produce.

The Commission held that in terms of section 57 and regulation 10 the potential to produce simply had to be real and demonstrable and not necessarily imminent and thus the conditions precedent for the issue of a Producer's licence had been met.

The Commission makes no determination on the other grounds of the Application for Review as the matter had been determined on the first ground of the Application.

Costs: There is no order as to costs.

A handwritten signature consisting of two stylized letters, possibly 'J' and 'V', with the number '102' written vertically near the left end of the signature.