

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

Applicant: Equanimity Investments Pty Ltd
12 Lake Street, Northbridge

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

Objector: Salmon Point Holdings Pty Ltd

Commission: Mr Jim Freemantle (Chairperson)

Date of Determination:
(on papers) 12 April 2011

Premises: Empyrean Function Centre

Matter: Application for a variation of the trading hours under section 63 of the *Liquor Control Act 1988* referred to the Liquor Commission by the Director of Liquor Licensing under Section 24 of the *Liquor Control Act 1988*.

Determination: The application is refused.

Authorities cited in Determination

- *Palace Securities Pty Ltd v Director of Liquor Licensing* [1992] 7 WAR 241
- *Executive Director of Health v Lily Creek International Pty Ltd & Ors* [2000] WASCA 258
- *Malec v J C Hutton Pty Ltd* [1990] 169 CLR
- *Equanimity Investments Pty Ltd v Director of Liquor Licensing and Executive Director of Public Health and Commissioner of Police* (LC 27/2009)

Background

1. On 29 December 2008, the Applicant applied for a special Facility Licence (Reception or Function Centre) in respect of premises situated at 12 Lake Street, Northbridge, known as Empyrean Function Centre, pursuant to section 46 of the *Liquor Control Act 1988* ("the Act").
2. On 14 July 2009, by way of Decision No. A194811, the Director of Liquor Licensing refused the Application for a Special Facility Licence ("the Decision") as he was not satisfied that granting the Application would be in the public interest.
3. The Applicant sought review of the decision of the Director of Liquor Licensing before the Liquor Commission.
4. On 11 November 2009, the Commission determined to quash the Director of Liquor Licensing's decision and grant the Special Facility Licence (Reception or Function Centre) subject to the condition that the hours of operation be limited to 0700 to 2200.
5. On the 22 July 2010, the Applicant lodged an application for the variation of the trading hours from 7:00am to 12:00 midnight from Sunday to Saturday with the Director of Liquor Licensing. The Director subsequently referred the application to the Liquor Commission pursuant to Section 24 of the Act.
6. A Notice of Intervention was subsequently lodged by the Commissioner of Police and a Notice of Objection by Salmon Point Holdings Pty Ltd.
7. Pursuant to section 16 of the act, the application is to be determined on the written submissions of the parties.

Submissions by the Applicant

8. As a result of a review of activities the applicant believes that it needs to attract more corporate clients and provide a "more realistic" training environment for the students. According to the Applicant extending permitted trading by 2 hours to midnight will further this objective.
9. The facility is an important training facility for the hospitality industry.
10. The clients of the facility have an average age of 37 years and are most unlikely to be involved in risk taking activities.

11. The last statistics from the WA Police show that alcohol related offences in Northbridge are declining.
12. The Applicant cites Doherty SJ & Roche AM “Alcohol and Licensed Premises – Best Practice in Policing – a monograph for Police and Policy makers” and Hughes V & Thompson B “Is Your House in Order? Revisiting liquor licensing practises and the establishment of an entertainment precinct in Northbridge”- report for Commissioner of Police. The Applicant claims its risk management assessment and consequent risk mitigation strategies are based on these authorities.
13. The Applicant wishes to provide work experience in real working conditions for its students including the management of late night trading.
14. The change in trading hours will reduce migration to other venues which in turn may cause issues for other Licensed premises.
15. The Applicant requests a lockout provision from 10.00 pm and states its policy of one drink per client rather than four will be served in the last hour of trading.
16. The Applicant has developed a comprehensive harm minimization strategy to reduce any impact on amenity and minimize any disturbance arising from trading.

Submission by the Intervener

17. Special circumstances need to be demonstrated before additional hours are considered. The Applicant has failed to do so.
18. To support the application the Applicant needs to identify strategies for minimizing harm.
19. There is high serious level of alcohol related harm in the area and even a relatively small risk of increase in that level of harm is unacceptable.
20. The venue is a corporate function centre and training centre not a nightclub thus the current hours are sufficient.

Submissions by the Objector

21. The Applicant’s business model is not that of a Function/Reception Centre.
22. The additional discharge of patrons during the peak incident period (11.00 pm to 3.00 am) would not be in the public interest.

23. The Applicant has not provided any specific evidence to support the contention that extended trading hours would be in the public interest.
24. Migration to other premises occasioned by the at 10.00 pm close is not of itself a justification of extended trading hours.
25. The Applicant appears to acknowledge in its Public Interest Assessment (“PIA”) that drunken or disorderly conduct and antisocial behaviour is more likely with trading to midnight.

Responsive Submissions by the Applicant

26. The Commissioner of Police has not provided factual evidence to support the claim that approval is not in the public interest or to support the contention that the approval may cause harm or ill health.
27. The Applicant has voluntarily endorsed a number of rigorous conditions on itself to minimize any potential harm.
28. The Applicant should not have to demonstrate special circumstances over and above the material contained in its PIA.
29. The Emyrean (the Applicant’s premises) are the safest in Northbridge.
30. The questions asked in the intervener’s submission were all answered in the PIA.
31. The function centre is open for the consumption of liquor to invited guests only.
32. The extension of hours will make the Applicant’s trading hours consistent with other Licensed venues in Northbridge.
33. Increased hours will create increased training opportunities.
34. The Applicant’s PIA satisfactorily addresses all matters raised by the intervener.
35. The objection by Salmon Point Holdings Pty Ltd should not be accepted by the Licensing Authority because:
 - a) the objector has a pecuniary interest in the outcome of the application despite it stating it did not in its Notice of Objection

- b) Salmon Point Holdings Pty Ltd the objector, owns and manages a club and cocktail bar adjacent to the applicants premises and is a direct competitor
 - c) previous issues between Mr Simon Barwood of Salmon Point Holdings Pty Ltd and Mr Patrick Ryan of Equanimity Investments Pty Ltd and between Mr Barwood and Mr James Hasson, a former employee of Equanimity Investments Pty Ltd.
36. Salmon Point Holdings Pty Ltd is “a well known serial objector within Northbridge”.
37. There is no evidence to support the objection.

Reasons for Determination

38. This is an application for variation of a condition of licence to extend the permitted trading hours from 10:00pm to 12:00 midnight from Sunday to Saturday. Pursuant to section 38(1)(c) of the Act, the applicant was required to advertise its application and also lodge a Public Interest Assessment PIA. The Applicant has complied with these requirements.
39. Pursuant to section 38(2) of the Act, an applicant must satisfy the licensing authority that granting the application is in public interest.
40. Pursuant to section 33(1), the licensing authority has an absolute discretion to grant or refuse an application on any ground or for any reason that it considers in the public interest; the discretion being confined only by the scope and purpose of the Act (refer *Palace Securities Pty Ltd v Director of Liquor Licensing [1992] 7WAR 241*).
41. Evidence submitted by the Intervener in this application and the evidence considered by the Commission when the licence was first granted indicates high levels of alcohol related harm in the vicinity of the licensed premises.
42. When considering the public interest, the licensing authority is bound by the objects of the Act as set out in section 5. In respect of this application, the objects set out in sections 5(1)(b) and (c) are particularly relevant.
43. 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*).

44. The Commission therefore needs to consider the level of alcohol-related harm, due to the use of liquor, which is likely to result from the grant of the application and whether the possibility of harm or ill-health is of a such a serious nature to be sufficient for the licensing authority to impose stringent conditions on a permit or refuse the grant absolutely. As observed by Ipp J (in Lily Creek supra), it is significant that the primary object in section 5(1)(b) is to “minimise” harm or ill-health, not to prevent harm or ill-health absolutely. The word “minimise” is consistent with the need to weigh and balance all relevant considerations.
45. The outcome will turn on the facts and particular circumstances in each case. Whether such harm or ill-health would arise in a particular case requires predicting the future (refer *Malec v JC Hutton Pty Ltd (1990) 169 CLR* as cited in Lily Creek supra).
46. The Applicant holds a Special Facility Licence and argues that the venue is a Specialist Corporate Function Centre and Hospitality Training Venue where persons may attend by invitation only and that there is a shortage of such venues in Northbridge and indeed in Perth generally.
47. It is a relatively large venue Licensed to hold 400 people.
48. The history of the Licence is relevant. The original application for the Licence was refused by the Director of Liquor Licensing on 14 July 2009 (Decision A194811). However on review by the Liquor Commission under Section 25 of the Act, the Commission (Commissioners Watling, Cogan and Lang) decided to grant the Licence but subject to the hours of operation being limited to 0700 to 2200 (LC27/2009).
49. The Commission in granting the application gave extensive reasons as to why the hours of operation should be restricted. The Commission stated at paragraph 40:

“The evidence establishes that the greatest demand for police and ambulance services in Northbridge is between the hours of 11pm and 3.00am when clientele from assorted liquor outlets are discharged into the streets, creating social mayhem and disorder.”

Consequently the Commission concluded at paragraph 41 that:

“ is satisfied that the ‘relatively small risk of increased alcohol-related harm’ properly identified by the Director of Liquor Licensing in

assessing this application can effectively be addressed by imposing a condition restricting the operation of the liquor licence to the hours of 0700 to 2200. This condition is consistent with the character of the premises as a corporate function centre rather than a nightclub.

50. It is apparent that the Commission in LC 27/2009 regarded the restriction of trading hours to those currently as the essential element of concluding that the incremental harm in granting the Licence could be minimised consistent with the objects of the Act, particularly Section 5(1)(b).
51. Thus the Applicant in this application needs to establish that there has been a sufficient change in circumstances or that further relevant material could be put before the Licensing Authority to make the case for an extension of trading hours. This it has failed to do. The PIA and subsequent submission do no more than rework previous material on which the decision to grant the Special Facilities Licence subject to the trading hours being confined to 0700 and 2200 was made.
52. Furthermore, I am not convinced by the Applicant's submission that the training available to hospitality students will be enhanced by the requested extension of trading hours.
53. I consider that the additional likely real and potential harm that would be caused by extending trading hours outweighs the consideration of meeting the demand of patrons or students.
54. I accept that the objection by Salmon Point Holdings Pty Ltd as being valid however in my opinion it needs to be treated with caution as the Objector is a competitor of the Applicant and therefore has a pecuniary interest in the outcome of this application. Consequently, I have not placed any significant weight on the Objector's submission.



**JIM FREEMANTLE
CHAIRPERSON**