

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Applicants: Fremantle Beverages Pty Ltd trading as the Impact Bar

Commission: Mr Jim Freemantle (Chairperson)

Date of Determination (on papers): 9 July 2010

Matter: Application to vary conditions of extended trading permit

Determination: The application is refused

Introduction

- 1 On 1 June 2010, Fremantle Beverages Pty Ltd, the licensee of premises known as the Impact Bar and located at 147 James Street, Northbridge lodged an application to vary the trading conditions of extended trading permit 34240, pursuant to section 64 of the *Liquor Control Act 1988* ("the Act").
- 2 The Director of Liquor Licensing, pursuant to section 24 of the Act, referred the application to the Commission for determination.
- 3 Pursuant to section 16 of the Act, the application is to be determined on the written submissions of the applicant.

Background

- 4 On 11 May 2010, the Commission, constituted by Mr Eddie Watling (Deputy Chairperson), Ms Helen Cogan and Mr Greg Joyce, granted an extended trading permit, pursuant to section 60(4)(g) of the Act, to the applicant authorising trading past 12 midnight on Friday and Saturday nights.
- 5 When granting the permit, the Commission imposed a number of conditions on the operation of the permit including the following "lockout" condition:

"Patrons are prohibited from entering or re-entering the premises after 12 midnight."
- 6 The applicant now seeks to have the above condition amended so that patrons cannot enter or re-enter the premises after 1.00am, rather than 12 midnight.

Submissions on behalf of Fremantle Beverages Pty Ltd in support of its application

- 7 It was submitted by the applicant that the Impact Bar is one of the smaller bars in Northbridge, is well managed and has no history of trouble. Mr Tony Taylor, a director of the licensee company spends time at the venue most nights and the managers and security staff are hand-picked and work closely with Mr Taylor to ensure that the premises operates lawfully and safely.
- 8 The bar is physically small and open and all areas clearly visible, therefore any problems can be dealt with immediately.
- 9 Northbridge is a late-night entertainment area and patrons often do not arrive until 10.00 or 11.00pm, expecting to be in the area until the early hours of the morning. The trouble and violence in Northbridge comes from the larger venues, not from small places like the Impact Bar, which is a victim of its location.
- 10 Since trading under the current extended trading permit, the licensee has experienced a significant downturn in trade. Patrons of the venue do not understand the nature of a

“lockout” because it is not enforced at any other venue. Security staff at the premises have to turn patrons away after 12 midnight, even if the venue is not at capacity. This results in patrons becoming frustrated and angry. Patrons inside the venue cannot step outside after 12 midnight for fresh air, to have a cigarette, get food, use their mobile phones in a quieter area or meet friends.

- 11 A two hour “lockout” prior to the closing of the venue is harsh and forces patrons to move to other venues and would appear to be in direct contrast to the intent of the philosophy of the responsible service of alcohol.
- 12 Such a restrictive condition should not be imposed on the Impact Bar when other venues in the area are not subject to the same condition.

Determination

- 13 When the Commission granted the applicant an extended trading permit authorising post midnight trading on Friday and Saturday nights a “lockout” condition was imposed on the operation of the permit. The applicant, who claims that the condition has had a detrimental impact on his business, now seeks to vary that condition.
- 14 The condition in question was imposed by the Commission after weighing and balancing the competing interests, particularly the operation of the permit in an area which experiences high levels of alcohol-related harm (refer para 52 of LC 15/2010). When considering the public interest, promoting the objects of the Act is an important and relevant consideration. The objects of the Act, as set out in section 5, requires the licensing authority to minimize harm and ill-health caused to people, or any group of people due to the use of liquor. The “lockout” condition that was imposed by the Commission is clearly directed to this end.
- 15 The applicant holds a tavern licence which authorises the licensee to sell and supply liquor from 6.00am to 12 midnight Monday to Saturday and 10.00am to 10.00pm on Sunday. The grant of an on-going extended trading permit under section 60(4)(g) of the Act is not an automatic privilege under the Act. Regulation 9F(b) when read in conjunction with section 38 of the Act requires the licensing authority to be satisfied that the grant of the permit is in the public interest. Neither the Act, nor the conditions of the permit, obligates a licensee to trade under the permit once granted.
- 16 In the evidence before the Commission for the grant of the extended trading permit, the licensee submitted that the majority of patrons attending the venue on Friday and Saturday nights arrive by 11.00pm. Therefore, notwithstanding any assertion now by the licensee that patrons are being turned away from the venue after 12 midnight because of the “lockout” condition, this should have minimal impact on the business of the venue. It is quite possible that patrons seeking to enter the premises after 12 midnight are people who are merely “bar hoping” or roaming from venue to venue simply looking for a place

to consume alcohol. There was also evidence before the Commission that high levels of violence and alcohol-related problems occur in the vicinity of the premises.

- 17 Whilst existing patrons may experience a degree of inconvenience, insufficient time has elapsed since the condition was imposed to properly assess the impact of the condition from a broader public interest perspective. The broader public interest would also take precedent over the financial considerations of the licensee, particularly since the grant of an extending trading in the first instance is not an automatic right and the licensee is under no obligation to trade under the permit. No doubt existing patrons may need to undergo a period of education in respect of the condition, and in this regard the licensee needs to adopt various strategies to facilitate this process.
- 18 In addition, I am of the view that the proposed variation of the condition cannot be justified simply because other premises in the locality do not operate under a similar condition. When the original extended trading permit application was being determined, the licensee was on notice that the condition that is the subject of this application may be imposed. In a letter to the Commission dated 6 April 2010 the Director of Liquor Licensing recommended that the condition be imposed if the application was granted. The licensee was sent a copy of that letter and chose not to address this matter in its submissions at the time. Furthermore, the Commission can only deal with the application or matter that is before it.
- 19 I also note that the Commission has, to date, only determined two applications under section 60(4)(g) of the Act for post midnight trading (Impact Bar and the Reef Hotel) and in each instance the Commission adopted a consistent approach and imposed the above condition.
- 20 Accordingly, I find that the applicant has not provided sufficient evidence to demonstrate that the variation of the condition, at this point in time, is in the public interest and therefore the application for variation of the "lockout" condition is refused.



JIM FREEMANTLE
CHAIRPERSON