

Liquor Commission of Western Australia
(Liquor Control Act 1988)

Applicant: Bremerton Pty Ltd and Westlander Pty Ltd

Commission: Mr Jim Freemantle (Chairman)

Date of Hearing: 25 May 2011

Date of Determination: 25 May 2011

Date of Reasons Published: 24 June 2011

Premises: De Bernales Tavern, Kalgoorlie

Matter: Application for review of a decision by the Director of Liquor Licensing under Section 25 of the *Liquor Control Act 1988*

Determination: The application is refused

Background

1. The Applicant holds a Special Facility Licence under the *Liquor Control Act 1988* ("the Act").
2. On 18 March 2011 the delegate of the Commissioner of Police lodged a complaint under Section 95 of the Act against Bremerton Pty Ltd and Westlander Pty Ltd in respect of the premises known as De Bernales Tavern.
3. On 27 April 2011 the Director of Liquor Licensing amended the Special Facility License curtailing the trading hours to 6am to midnight every day other than Sunday on which day the trading hours were to be 10am to 10pm, by virtue of the powers granted to him under Section 95(6) of the Act.
4. On 2 May 2011 the Applicant lodged an Application for Review of this decision.
5. On 5 May 2011 the Director of Liquor Licensing lodged an intervention notice

which was subsequently withdrawn on 12 May 2011.

6. On 6 May 2011 the Commissioner of Police lodged an intervention notice which was subsequently withdrawn on 13 May 2011.
7. A hearing was held on 25 May 2011.

Submissions by the Commissioner of Police

8. The material relied on by the Director of Liquor Licensing in imposing the restriction on trading hours under Section 95(6) pending the hearing of a complaint lodged under Section 95 of the Liquor Control Act was that submitted by the Commissioner of Police to support the Section 95 complaint.
9. Police Incident Reports reveal a high level of call outs and attendance at the premises.
10. There is a presence of Outlaw Motor Cycle Gang members on the premises.
11. Employees are associated with some of the incidents on the licensed premises.
12. The majority of incidents occur after midnight.
13. Juveniles were permitted to consume liquor.
14. Serious incidents occurred on 7 November 2010 and 12 February 2011 one involving the Gypsy Jokers Outlaw Motor Cycle Gang.
15. Various offences of an administrative nature including failure to properly keep incident register, failure to display licence and improperly kept training register.
16. There is a failure to provide meals at times which the conditions on the licence require.
17. The nature of the relationship between Approved Manager Lynette McDougall and Outlaw Motor Cycle Gang members gives rise to significant concern.

Submissions by the Applicant

18. The safety health and welfare of the public does not require a variation of the trading hours.
19. This application was predicated only on facts and evidence relating to section 95 complaint lodged by the Commissioner of Police and not on any question of law.
20. There is insufficient evidence in respect of the level of offences cited by the Commissioner of Police during the hours after midnight to warrant the action taken by the Director.

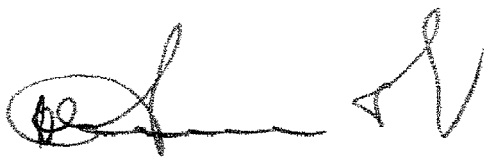
21. There is a lack of evidence tying the offences cited by the Commissioner of Police to patrons of De Bernales Tavern.
22. Any offending which does take place is largely confined to the summer months.
23. The premises are located in the main entertainment strip of Kalgoorlie and many of the "move on" orders issued by Police were to persons other than patrons of De Bernales Tavern.
24. Offences alleging that Juveniles were permitted on the premises have little or no relevance to the question of trading hours.
25. The incident on 7 November 2010 involving a fight between (unpatched) Gypsy Joker members and Maori patrons was not the fault of the management of the hotel nor is there any evidence to suggest that it did not intervene and act appropriately.
26. The fight that took place on 12 February 2011 should not lead to the conclusion that there was any deficiency on the part of management.

Determination:

27. Section 25 of the Act provides a mechanism for review of a decision of the Director of Liquor Licensing by the Liquor Commission.
28. Such a review may have regard only to the material before the Director and new material may not be introduced.
29. The Commission is not constrained to finding error in the determination by the Director but undertakes a full review of the material before the Director and makes its own determination. See *Martin CJ, Hancock v Executive Director of Public Health (2008) WASC224* at 53 and 54.
30. The Police evidence reveals a relatively high frequency of incidents at the premises and need for Police attendance, however the evidence was challenged by the Applicant:
 - (i) as to relevance to the specific action of an interim measure of curtailing hours;
 - (ii) whether many of the incidents could be reasonably attributed to the management of the premises; and
 - (iii) any real correlation between offences and incidents and hours of trading.
31. I agree that a number of the grounds and complaints in the Section 95 notice are not relevant in this matter via issues surrounding incident and training registers, display of licence and failure to provide meals at required times and I disregarded them.
32. I accept that the premises are located in a prominent site in the entertainment hub of Kalgoorlie and there is substantial passing pedestrian traffic and indeed

some congregation of people in the immediate vicinity of the premises. Although I was particularly concerned to form an opinion on the evidence of the level of incidents which could reasonably be attributed to De Bernales Tavern, I concluded on the balance of probabilities that a significant number of incidents occurring and "move on" notices issued immediately proximate to the premises could be attributed to the conduct of De Bernales Tavern.

33. I formed the view that the evidence in support of harm being correlated with the hours after midnight was slightly more tenuous. However I noted that in 12 months January 2010 to January 2011, 22 "move on" notices were issued in the immediate proximity to the premises. I accept that problems were more likely to occur in the summer months.
34. Concerning the evidence as to the level of incidents in the premises, I formed the view that although in some cases there were mitigating circumstances and appropriate intervention by security staff, the level of intoxication very apparently evidenced by the Police incident reports was of real concern.
35. I accept that the control of Outlaw Motor Cycle Group elements in licensed premises is often difficult particularly when those persons are not patched. However they are obviously known to staff and whilst Lynnette McDougall denies any improper involvement, I have some concern about her apparent relationship with Outlaw Motor Cycle Group elements on the licensed premises.
36. On weighing up the evidence before me, being the material before the Director when he made the decision, I am of the view there is sufficient evidence to warrant the curtailment of hours to 6am to midnight on each night other than Sunday when the hours shall be 10am to 10pm in the interest of the safety and welfare of the public, thus the application fails and the decision of the Director stands.



JIM FREEMANTLE
CHAIRPERSON