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Is the tide turning against the grant of applications? Are there tougher times ahead for applicants?

Evidence may be mounting that the licensing authority is starting to take a harder line on the grant of new applications. Is the liberal granting of new licences that has been occurring since the introduction of the Liquor Control Act 1988, starting to wane? The answer lies in evaluating the recent decisions of the Director of Liquor Licensing.

In April 2010 two special facility amusement venue licences were refused. One related to Dragon Palace Chinese Restaurant in Francis Street, Northbridge and the other to Point 88 in James Street, Northbridge. Both applications were the subject of interventions by the Executive Director of Public Health and the Commissioner of Police.

Dragon Palace trades under a restaurant licence with a drinking extended trading permit providing a fine dining karaoke restaurant service. The application for a change of licence was motivated by the karaoke activities. The application was not supported by any market analysis, petitions or consumer testimonials to prove the premises would be catering for additional requirements of consumers for liquor and related services. The main health argument against the application was that the premises was operating in a locality with many high risk, late night trading licensed premises, in an area already experiencing high levels of alcohol related harm. The main objection from the police was the fact the applicant proposed to trade until 6am without crowd controllers. The Director concluded that the veracity of the evidence of possible harm or ill health outweighed the evidence that the grant would cater for currently unmet requirements of consumers and related services. Even a relatively small risk of increase in that type of harm was unacceptable. Further, the Director was not satisfied that viewing or participating in karaoke was consistent with the primary purpose of the type of licence sought.

In the Point 88 application the aim was to offer a range of entertainment and activities such as pool, snooker and karaoke in premises which are part of a food hall, bar, pool and snooker parlour. The underlying objection from the Executive Director of Public Health appears to have been the location of the premises in Northbridge and the potential to contribute to existing unsatisfactory levels of alcohol related harm or ill health. No evidence was submitted by the applicant to support its assertions or demonstrate that the licence, if granted, would not exacerbate existing problems. The application was also criticised for not having provided evidence as to how the proposed premises would respond to or cater for the demands of the public. The police raised similar issues. In response the applicant proposed amending trading hours and argued the primary business operation was its restaurant section and that karaoke and pool facilities were ancillary activities. The conclusion was that questions and doubts remained concerning the proper robust business planning and market research undertaken by the applicant. It was felt that the application lacked credibility concerning the actual requirements of consumers for liquor and related services. This case also highlighted the fact that the onus is entirely on an applicant to satisfy the licensing authority that the grant of a licence is in the public interest. The applicant had failed to demonstrate that it could place adequate controls over the sale, disposal and consumption of liquor.

These two decisions clearly show that Northbridge has its own special issues. Therefore, one cannot generalise as to the overall approach to any grant or refusal based on that locality. The two cases also highlight the fact that to be a meritorious applicant one needs to supply cogent evidence which addresses the key issues. The onus of proof is firmly on an applicant.

Our next snapshot will address this same question, namely the current approach of the licensing authority to the burden of proof on an applicant, specifically in relation to liquor store licences.

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