

MULLINS MULLINS hospitality

Newsletter of Mullins Lawyers

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EDITORIAL *By Curt Schatz*

This is the second edition of our Hospitality Newsletter. We are seeking to identify issues which are either topical, or will affect the majority of you.

The industry is very buoyant at the moment and many of you are renovating or refurbishing your premises in preparation for sale, and to maximise your returns either from the business, or from a sale.

We have written some articles which set out the requirements of the regulators in relation to such works.

We have also highlighted the law surrounding Certificates of Classification which need to issue in certain circumstances for hotels to be lawfully occupied. This may impact upon you either upon sale or purchase of a hotel, or where any unlawful use comes to the attention of the local authority.

Many applications are being made for new hotels in emerging residential areas. Other hoteliers are applying to change the liquor and/or gaming conditions of their hotel. Most of these applications require advertising to provide opportunity for affected parties to object. We have written an article setting out grounds for objection and highlighting circumstances where a commercial competitor is better off to prepare a submission which puts the applicant to the test as to commercial need.

This may assist you in understanding this process in the future.

Once again, we want to emphasise our desire to continue to work closely with the industry. If you have any queries regarding any matters, please contact me.

STOP! RENO

Photos supplied courtesy of The Story Bridge Hotel.



There is no doubt that property values in South East Queensland have risen dramatically in recent years. That growth looks set to continue with investors from south of the border still seeing growth potential in our property market.

The State Government is mooting new laws to help resolve neighbours disputes tipped to rise by the likely increase in population in South-East Queensland by approximately one million people over the next fifteen years.

This influx of southern buyers is no more evident than in the hotel market and the growth in the market has been reflected in the value of hotels throughout South-East Queensland. With this growth in the market many publicans are looking to maximise the value of these assets and maximise the hotel's profitability by undertaking renovations and upgrading facilities. Publicans may consider renovating following the purchase of a hotel or in preparation for sale of a hotel. In either case they should ensure that the renovations comply with the regulatory framework of government authorities.

Most developers and publicans will already be aware of the need to consult with local councils and obtain their approval prior to commencing major works on a hotel premises. What they should also be aware of is that the approval of liquor and gaming licensing authorities is also required before commencing any renovations.

RULES

By: James Woodgate

The Liquor Licensing Division will essentially require the submission of details of the proposed renovations, such as plans and council approvals. Some of the other main issues to bear in mind in terms of compliance with the Division's requirements are:

- 1 Whether the hotel will be closing or continuing to trade during the renovations. If the hotel is to remain open then Liquor Licensing will require details of what areas of the hotel will still be operating during the alterations. If the licensee decides to close during the renovations then the Division will suspend their licence. It is important to note that even though the licence will be suspended and the main premises not trading, any detached bottleshops attaching to the licence are still permitted to trade with the approval of the Liquor Licensing Division.
- 2 How the renovations will affect the level of noise emanating from the hotel. It is important that noise levels are considered when planning the works. If it is intended that noise levels will be increased then the Division will require the preparation of an acoustics report. Therefore, to avoid any issues noise prevention measures should be considered as part of the alterations from the outset.

If there are gaming machines at the hotel then they may need to be relocated during different stages of the renovations. If this is the case then the approval of the Queensland Office of Gaming Regulation ("QOGR") will need to be obtained before changing the location of the machines on a temporary basis. It follows that any permanent change to the location of the machines as a result of the renovations will also require the approval of the QOGR.

It is important that thought is given to the above matters and that applications are lodged with both the Liquor Licensing Division and the QOGR prior to commencement of any renovations. The approval of these authorities is just as important as Council approvals, as a failure to comply with their requirements could put the hotel's liquor and gaming machine licences at risk.

ARE YOU CLASSIFIED?



By: Cameron Hurd

Certificates of Classifications are often required in order to sell a property. Sometimes they are required and sometimes they are not. Check first.

If you are thinking about selling the freehold of your tavern or hotel you need to firstly satisfy yourself that the building, or if relevant, any renovations or additions to the building, have all required approvals in place to enable lawful occupation. Failure to do so may significantly impact on your ability to successfully sell the hotel to a prudent buyer.

A CERTIFICATE OF CLASSIFICATION IS A CERTIFICATE GENERALLY ISSUED BY A PRIVATE CERTIFIER, THE ISSUING OF WHICH CONFIRMS THAT A BUILDING CAN BE LAWFULLY OCCUPIED.

A certificate of classification is a certificate generally issued by a private certifier, the issuing of which confirms that a building (or part of a building) can be lawfully occupied. As a general rule, if a certificate of classification is required to be issued, but has not been issued, a building cannot be lawfully occupied.

The first step then is to determine if your building, or any renovations or additions to the building, require a certificate of classification to be issued. The date of construction of the building is a handy starting point to help establish this.

As a general rule, if a building was built prior to 1 April 1976 there is no requirement for a certificate of classification to be issued for the actual building in order for it to be lawfully occupied. However, in most cases a certificate of classification is required to be issued for any renovations or additions to the building, particularly if such renovations or additions were to the outside of the building or were "add-ons" to the building.

Conversely, if a building is built after 1 April 1976 a certificate of classification must be issued for the building in order for it to be lawfully occupied. If the intended "use" is consistent with the original classification of the building it is arguable that any renovations or additions to the building do not require a certificate of classification to be issued. However, this is usually determined on a case-by-case basis, taking into account the nature of the works and whether the renovations or additions were to the outside of the building or were "add-ons" to the building, in which case it is likely that a certificate of classification is required to be issued.

Irrespective of what the terms of a contract for the sale of freehold says, if a certificate of classification is required to be issued, but has not been issued, a building cannot be lawfully occupied. Where a certificate of classification is required to be issued a prudent buyer, who has discovered via its enquiries that a certificate of classification is required to be issued but has not in fact been issued, may terminate the contract and have other rights against the seller if the seller is unable to cause a certificate of classification to be issued prior to settlement. To potentially make matters worse for the seller, the buyer's enquiries may put the local Council on notice that a certificate of classification is required to be issued - and if the local Council subsequently require a certificate or classification to be issued it would be then up to the seller to undertake at its cost any works necessary to ensure that it is.

Clearly then, it pays for the seller to be aware of its legal position before it enters into a contract to sell the freehold of its hotel or tavern.

...IT PAYS FOR THE SELLER TO BE AWARE OF ITS LEGAL POSITION BEFORE IT ENTERS INTO A CONTRACT TO SELL THE FREEHOLD OF ITS HOTEL OR TAVERN.

OBJECTION YOUR HONOUR



By: Matthew Bradford

There has been a lot of confusion recently over whether commercial competitors can object to an application for a liquor licence that may adversely affect their business and on what grounds. Basically, competitors may object but they must show that the proposed premises will cause actual annoyance, disturbance or inconvenience to their business or that the new premises will adversely affect the amenity, quiet or good order of the locality. Competitors cannot object on the grounds that they will financially suffer as a result of a new premises being established. Competitors may also make a submission focusing how the application is not in the public interest, including the lack of public need for another licensed premises.

The right to object is contained in section 119(3) of the *Liquor Act 1992 (Qld)* ("the Act"), which provides that a member of the public may object on the grounds that the proposed licence:

1. is likely to cause undue offence, annoyance, disturbance or inconvenience to persons who reside, work or do business in the locality, or to persons attending or travelling to a place of public worship, hospital or school; or
2. is likely to lessen the amenity, quiet or good order of the locality.

A member of the public is an individual or body of persons (which includes a corporation) that:

1. has a proper interest in the locality; and
2. is likely to be affected by the grant of the licence (section 119 of the Act).

In a number of cases, the Liquor Appeals Tribunal and the Commercial and Consumer Tribunal have decided that a commercial competitor can be classed as a member of the public and entitled to object, provided that they satisfy the two requirements in section 119(5) of the Act. Having a proper interest in the locality can be satisfied if the competitor's business is located in the area near the proposed site. However, it is more difficult for a competitor to show that they are 'likely to be affected' by the grant of the licence.

The Tribunals have decided that to make an objection, the competitor must be 'likely to be affected' for the same reasons that other members of the public can object under section 119(3) of the Act, which are that the proposed premises will cause undue offence, annoyance, disturbance or inconvenience to its business and/or that the amenity, quiet or good order of the locality will be lessened in some way.

A competitor cannot object on the basis that they will financially suffer because they will lose business to the proposed premises. It will also be difficult and hypocritical for the owner of a hotel to object to a similar hotel being established on the basis that there will be an increase in public drunkenness, loud noise, etc. One ground for objection may be that there is not ample carparking space available to support two hotels, or it will increase traffic congestion, thus lessening the amenity of the area.

Another option for commercial competitors, particularly where they have no real grounds for an objection, is to lodge a submission on public interest under section 118A of the Act. This submission can be on the same issues as the applicant's public interest submission and will quite often focus on the lack of need for another licensed premises. Relevant factors include the number, distribution and type of licensed premises already in the area, population and tourist trends, likely health and social impact and the proximity of the proposed premises to any sensitive facilities. However, the difference between such a submission and an objection is that a person who makes a submission will not be invited to the objections conference and does not have a right to appeal against a decision to grant the licence.

A COMPETITOR CANNOT OBJECT ON THE BASIS THAT THEY WILL FINANCIALLY SUFFER...