

Northern Territory Licensing Commission

Directions Hearing Decision

Premises:	Top Springs Hotel
Licence Number:	81203330
Licensee:	Jones Cattle (NT) Pty Ltd
Nominee:	Ms Pauline Haseldine
Proceedings:	Directions Hearing into a Review of Commission Decision Pursuant to Section 27 of the <i>Northern Territory Licensing Commission Act</i>
Heard Before:	Ms Brenda Monaghan (Presiding Member) Ms Helen Kilgariff Mr John Brears
Appearances:	Ms Bronwyn Haack, Counsel Assisting the Commission Mr Alan Woodcock for the Licensee Mr Kelvin Currie for the Director of Licensing Mr Bruce Taylor for the Central Land Council Ms Zoe Langridge for Northern Territory Police
Date of Hearing:	18 February 2014

Introduction

- 1) On 8 August 2012 the Northern Territory Licensing Commission (“the Commission”) made a Decision to vary the licence conditions at Top Springs Hotel. On 14 August 2012 a notice pursuant to Section 33 of the *Liquor Act* (“the Act”) was served upon the Licensee. The notice was in the following terms:

Section 33(1) of the Liquor Act provides that “Subject to this section, the Commission may, from time to time by notice in writing, vary the conditions of the licence held by a Licensee.”

The following conditions will be inserted in Liquor Licence 81203330.

The sale of takeaway liquor is restricted to twelve heavy beers or thirty light or mid-strength beers per person not being bona fide residents of the premises per day with a maximum of three individual purchases per vehicle only.

Sale of liquor on purchase order to nearby cattle stations must be pre ordered on account and is exempt from the takeaway liquor restriction.

Pursuant to Section 33(2) of the Liquor Act, you may seek a Hearing with the Commission into the conditions of your licence. Should you seek a Hearing, your request in writing, must be received at this office within twenty-eight (28) days of your receipt of this notice.

- 2) On 23 August 2012 the Licensee sought a Hearing in the matter. The Hearing proceeded in December 2012 and a final Decision was handed down on 24 May 2013. The Licensee then appealed the decision to the Northern Territory Supreme Court. Before the appeal was heard, a Notice of Discontinuance was filed on the agreement that the Commission would conduct a review under Section 27 of the *Northern Territory Licensing Commission Act*.
- 3) A Licensing Commission review panel was appointed on 23 September 2013. Since then, it appears that there have been unavoidable delays in progressing the review due at least in part to the unavailability of Counsel for the Licensee, weather conditions over the wet season and changes to membership of the Commission. The current panel was seized of the matter in late January 2014, Counsel Assisting was appointed and a first Directions Hearing was listed for 18 February 2014. A Notice of the Directions Hearing was provided to:

Ms Pauline Haseldine, Nominee, Top Springs Hotel
Jones Cattle NT Pty Ltd, Licensee, Top Springs Hotel
Mr Alan Woodcock, Counsel for Licensee
Mr Michael Burrows, Counsel for Licensee
Ms Karen Avery, Director of Licensing, Gambling & Licensing Services
A/Commander Michael White, Northern Territory Police
Mr Sean Heffernan, Chief Executive Officer, Katherine West Health Board
Mr Robert Chapman, Central Land Council on behalf of the Kurdiji Group
Mr Mark Coffey, Department of Prime Minister and Cabinet

The Notice advised that the Directions Hearing is intended to assist the Commission in deciding the following matters:

- *The appropriate form of the final hearing (de novo, on the papers or a blend);*
 - *The proposed oral and/or written evidence to be relied on by interested parties at the final hearing;*
 - *The manner and breadth of community consultation required as part of the final hearing;*
 - *The existence of any other interested parties (apart from those listed above who have received this notice) who should be notified of the final hearing; and*
 - *Details about the hearing (including consultations) such as suitable dates, venue/s and length of hearing.*
- 4) The Directions Hearing proceeded as scheduled on Tuesday, 18 February 2014. The Commission made Directions on some matters and deferred others for further consideration. The paragraphs below confirm the decisions made by the Commission at the Directions Hearing on some matters and clarify the Commission's current position on others. The Commission considers it important for both the Licensee and the members of the public purchasing takeaway liquor from Top Springs that a final Decision is made in this matter promptly and the Directions made and timeframes provided reflect that intention.
- 5) The Commission also raises at this stage an issue that was not covered specifically at the Directions Hearing but is worthy of comment at this stage. The original Section 33 Notice served upon the Licensee was aimed at restricting the sale of takeaway beer. The Commission must always be mindful of substitution issues

however and the parties are advised that the final Hearing will consider the impact and likelihood of the substitution of other types of liquor should only one type be restricted. The final Decision of the Commission will reflect conclusions reached on all issues including substitution.

- 6) The Commission also reiterates comments made by the Chair at the Directions Hearing. Although any decision to vary the licence conditions of Top Springs Hotel impacts first and foremost on the Licensee, it also impacts significantly on the surrounding community. It is important that the Commission examine as part of the hearing process concerns raised by local Indigenous communities that alcohol supply from Top Springs is having an impact on their communities.

Matters Considered at Directions Hearing

- 7) There is agreement that the review is conducted under Section 27 of the *Northern Territory Licensing Commission Act* and that it will proceed as a hearing de novo. Specific matters considered at the Directions Hearing are set out below.

Parties/Interested Persons

- 8) Brief submissions were made at the Directions Hearing about the nature of the Hearing, the identity of the “parties” and ability of the Commission to add extra parties if considered necessary or appropriate.
- 9) The Department of Prime Minister and Cabinet have advised through Counsel Assisting that they do not seek to be a party to these proceedings but they do seek to provide a report regarding alcohol supply issues to the Commission. Ms Zoe Langridge from the Drug & Alcohol Policy Unit attended on behalf of Northern Territory Police and advised that they will seek to appear as witnesses at the Hearing rather than a party and that they intend to provide incident/ offence data in relation to the region.
- 10) Mr Taylor appeared at the Directions Hearing on behalf of the Central Land Council (“CLC”) and of the Kurdiji people that the CLC represents. Mr Taylor submitted that both the CLC and the Indigenous community members it represents should be considered as parties. Mr Taylor submitted that the *Northern Territory Licensing Commission Act* applies to this Hearing and that the Commission has discretion to join them. Mr Woodcock opposed such a view and submitted that the hearing power in Section 51 of the *Liquor Act* applies to this hearing. He submitted that the definition of “party” in Section 51(11) contains an exhaustive definition of the categories that can be parties and the Commission has no capacity to join the CLC or any group they represent as a party.
- 11) The interplay between the *Northern Territory Licensing Commission Act* and the *Liquor Act* on this issue is not without its challenges and the Commission seeks submissions from the Licensee, the Director of Licensing, the CLC and Counsel Assisting. The submissions on behalf of the CLC and those they represent must be filed with the Commission (by email to robyn.power@nt.gov.au) and served on the Licensee and the Director (by email) within seven days of receipt of this Decision by the CLC. Submissions in response to be filed and served within a further seven days. The Commission will then make a decision on this issue.

Hearing Brief

- 12) The Commission has no objection to the transcript, hearing brief and documents tendered at the previous Hearing being tendered as evidence to be relied on at this Hearing. The Commission asks Counsel Assisting to arrange for a draft hearing brief to be provided to the Licensee and the Director of Licensing. A copy of the Draft Brief is also to be provided to the CLC, noting in doing so that a formal decision of whether the CLC is a party has not yet been made. The documents are provided because Mr Taylor has offered to assist in facilitating community consultation and some background on the matter will assist him in this regard.
- 13) The Licensee, Director of Licensing and the CLC are given seven days from the date of service to object in writing (via email) to Counsel Assisting to the inclusion of any documents. If there is a dispute, then the Commission will make a decision. Otherwise, hearing briefs will be prepared and provided to the hearing panel. These briefs will be later supplemented by any further documentary evidence and reports no later than fourteen days prior to the Hearing.

Community Consultation

- 14) The Commission has confirmed its intention to include community consultation in the hearing process. The original Section 33 licence variation was partly in response to a request from some community members that the Commission address the issue of alcohol harm caused, they say, by takeaway alcohol sold at Top Springs Hotel. The Commissioners on the current hearing panel have either not been to the affected areas or have not been there for many years.
- 15) The Commissioners consider it important that they have sufficient knowledge of the area and the issues to inform them. The Commission need further guidance before deciding what is necessary and reasonable in terms of community consultation and ask Counsel Assisting to make enquiries and advise on reasonable options for consultation. A decision will then be made and the parties notified. It is hoped that consultation can occur before the Hearing commences in Katherine. If that is not possible and the consultation is after the hearing in Katherine, then it is suggested that an opportunity is made for final submissions post-consultation to be made in Darwin.

Timing

- 16) Subject to confirmation that suitable premises are available, the final Hearing is listed for five days commencing 28 April 2014 at Katherine. Five days are allocated but the actual length of the Hearing will need to be confirmed as it is unlikely to take a full five days - particularly if community consultation is conducted separately. Submissions and supplementary documents must be filed and served fourteen days before the Hearing.

Stay

17) Finally, the original Decision dated 24 May 2013 varying the licence conditions of Top Springs Hotel is stayed until further order.

Brenda Monaghan
Presiding Member

21 February 2014